Mediaeval Sources in Translation
38

PIMS

The Land Legislation of the Macedonian Emperors

Translated, with an introduction and notes by

ERIC McGEER

MEDIAEVAL SOURCES IN TRANSLATION 38

The Land Legislation of the Macedonian Emperors

Translation and commentary
by
ERIC MCGEER

The land legislation issued by the emperors of the Macedonian dynasty is the most important source for the internal history of tenth-century Byzantium. In his edict of 934, the emperor Romanos Lekapenos declared that the prosperity and stability of the rural populace were essential to the empire's fiscal and military well-being. He stated this at a time when imperial control over the mainstay of the fiscal system — the village communes and the peasant smallholders who inhabited them — was threatened by powerful magnates, members of an emerging aristocracy, who were entering the rural communities to acquire peasant lands and labour. The challenge to imperial authority in the countryside had become even more serious after the terrible famine of 927-928, which had forced many peasants to sell or give up their lands to "the powerful", as Lekapenos called the magnates in his legislation. For the next sixty years, Lekapenos and his successors used the law to defend the "poor" from the depredations of the "powerful" and to preserve the fiscal and military system on which imperial authority rested.

The fourteen legal decrees which form the land legislation impress the modern reader with their immediacy and sense of urgency, and they present a valuable record of the imperial policies devised in reaction to the crises and changes in the Byzantine countryside. This volume offers the first full translation of the land legislation into English. To make the work accessible to non-specialists and specialists alike, the introduction covers the background and content of the legislation, and reviews the principal institutions of Byzantine rural society: the village communes, the military lands, and the monasteries. The translations aim to strike a balance between adherence to the technical nature of the documents and presentation of clear, readable texts. Where necessary, technical terms and specific details are explained in the notes to the translations; the notes also direct the reader to the relevant scholarly literature concerning the legal, social, and agrarian aspects of the land legislation. Maps and a glossary are also included as aids to the reader.

This page intentionally left blank

MEDIAEVAL SOURCES IN TRANSLATION 38

The Land Legislation of the Macedonian Emperors

Translation and commentary

by

ERIC MCGEER

PONTIFICAL INSTITUTE OF MEDIAEVAL STUDIES

ACKNOWLEDGMENT

This book has been published with the help of a grant
from the Humanities and Social Sciences Federation of Canada,
using funds provided by the Social Sciences and
Humanities Research Council of Canada.

CANADIAN CATALOGUING IN PUBLICATION DATA

The land legislation of the Macedonian emperors

(Mediaeval sources in translation, ISSN 0316-0874 ; 38)
Includes bibliographical references and index.
ISBN 0-88844-288-2

1. Land tenure (Byzantine law) — Sources. I. McGeer, Eric, 1955– .
II. Pontifical Institute of Mediaeval Studies. III. Title. IV. Series.

KJA1355.L36 2000 346.495'0432 C00-931531-4

© 2000
Pontifical Institute of Mediaeval Studies
59 Queen's Park Crescent East
Toronto, Ontario, Canada M5S 2C4

Printed and bound in Canada by
Hignell Printing, Winnipeg, Manitoba

To

MY FATHER

AND THE MEMORY OF

MY MOTHER

This page intentionally left blank

Contents

Preface ix

Abbreviations xi

Maps xiii

Introduction 1

I. The context of the legislation 1
1. The Macedonian Dynasty 1
2. The texts of the Macedonian land legislation 3
A. The collection 3
B. Novel and rescript 5
3. The scope and purpose of the legislation 7
II. The Byzantine countryside in the tenth century 9
1. The village commune 9
A. Pre-emption and prescription 11
B. The survival of the village commune 13
2. The military lands 15
A. The Byzantine army and the military lands 15
B. The aims of the legislation on the military lands 17
3. The monasteries 21
4. The "powerful" and the "poor" 25
A. The terminology 26
B. The *dynatoi* and the law 28
III. The translations 31
1. Editions and supplementary works 31
2. Note on Byzantine chronology 33

Emperors of the Macedonian Dynasty 34

The Novels of the Macedonian Emperors

A	Leo VI permits the unrestricted alienation of property	35
B	Romanos Lekapenos revives the law of pre-emption	37
C	Romanos Lekapenos bars the powerful from the village communes	49
D	Constantine VII reinforces the laws against the powerful	61
E	Constantine VII protects the military lands	68
F	Romanos II clarifies the rules on compensation	77
G	Constantine VII rules on the restoration of military lands to the *stratiotai*	82
H	Nikephoros Phokas rules on land claims and homicide in the Armenian themes	86
J	Nikephoros Phokas restricts the growth of monasteries	90
K	Nikephoros Phokas curtails the rights of purchase of the powerful	97
L	Nikephoros Phokas rules on compensation to the powerful	102
M	Nikephoros Phokas raises the minimum inalienable value of military lands	104
N	Basil II repeals Nikephoros Phokas's legislation on the monasteries	109
O	Basil II takes up the defence of the poor and the village communes	111

Glossary of Terms 133

Bibliography 134

Index 143

Preface

The land legislation promulgated by the emperors of the Macedonian dynasty (867-1056) is a fundamental source for the history of tenth-century Byzantium. This legislation consists of fourteen imperial novels — official enactments of new laws — varying in form, scope, and content, but united by a common focus on the sale or transfer of land. Issued in response to the conditions and crises in the Byzantine countryside during the tenth century, and infused with an immediate, urgent tone, the novels record the conception and application of Byzantine land law. They preserve a valuable record of the internal history of Byzantium in an era marked by the rise of an aristocracy and the transformation of rural society and institutions.

The purpose of this work is to provide a complete translation of these novels, a task not previously undertaken despite the many studies devoted to the land question in the Byzantine empire. The legal, agrarian, and social aspects of the legislation have been investigated by a succession of scholars ever since the studies of Vasilievsky and of other Russian Byzantinists opened the field in the nineteenth century; but the past few years have seen established views on these topics challenged by important new studies which have revised our understanding of Byzantine rural society. With the publication of Nicolas Svoronos's long awaited edition of the novels dealing with the land, the time seemed opportune for a full translation of the novels which would allow both scholars and students of Byzantine and western mediaeval history to consult these sources more easily.

It is a pleasure to acknowledge the help and encouragement offered by friends and colleagues as this book took shape. My thanks go first to Professor Malcolm Wallace of the University of Toronto, for his generous assistance in reviewing the translation and offering many helpful comments. I would also like to thank Dr. Paul Mitchinson for his editorial suggestions; Mr. Fred Unwalla of the Pontifical Institute of Mediaeval Studies for his interest and valuable advice as I prepared this work for submission to the Mediaeval Sources in Translation series; the anonymous readers for their comments and suggestions; Jean Hoff for her meticulous editing of the manuscript; Mr. Byron Moldofsky for the maps; my colleague Ms. Veronica Butler for the line drawings; and Dr. Irene Vaslef and the staff of the Byzantine Library at the Dumbarton

Oaks Research Center in Washington, D.C., for kindly providing me with bibliographical material unavailable in Toronto.

I also wish to acknowledge my gratitude to the Humanities and Social Science Federation of Canada for awarding funds for the publication of this book.

My greatest debt of thanks is to Professor Nicolas Oikonomides, who first introduced me to these texts many years ago in a graduate seminar at the Université de Montréal. It was at his suggestion that I undertook this project, and his encouragement and comments on the translations were very helpful to me as I prepared this work for publication. Sadly, just as this book was going to press, word came that Professor Oikonomides passed away in Athens on 31 May 2000.

It is hardly possible to do justice to the rich legacy which Nicolas Oikonomides leaves behind. His knowledge and expertise extended to every discipline within the field of Byzantine studies, and his scholarly publications covered the whole of Byzantine civilisation. His works on the administrative and institutional history of Byzantium, the lists of precedence, the Byzantine economy, the fiscal system, sigillography, to name only a few of his many important contributions, will remain indispensable for decades to come.

He was an ideal teacher, patient, approachable, always ready to listen and to offer his help. Above all, he was a gentleman, courteous and hospitable, whose company will be sadly missed. I hope that in some measure this book will serve as an expression of gratitude, affection, and remembrance.

Abbreviations

Byz. Arabes	Vasiliev, A.A. *Byzance et les Arabes*. French edition prepared by Henri Grégoire and Marius Canard. 3 vols. Brussels: Institut de philologie et d'histoire orientales, 1935-1968.
Darrouzès, *Epistoliers*	Darrouzès, Jean. *Epistoliers byzantins du X^e siècle*. Paris: Institut français d'études byzantines, 1960.
De cerimoniis	Constantine VII Porphyrogennetos. *Constantini Porphyrogeniti imperatoris de cerimoniis aulae byzantinae*. Ed. J. Reiske. 2 vols. Bonn, 1829-1830.
Dölger, *Regesten*	Franz Dölger, *Regesten der Kaiserurkunden des oströmischen Reiches von 565-1453*. 1: *Regesten von 565-1025*. Munich and Berlin: Verlag R. Oldenbourg, 1924. Reprinted Hildesheim: Dr. H.A. Gerstenberg, 1976.
Fiscal Treatise	Ed. Franz Dölger, in *Beiträge zur Geschichte der byzantinischen Finanzver-waltung, besonders des 10. und 11. Jahrhunderts*, pp. 113-123. Leipzig and Berlin, 1927. Reprinted Hildesheim: G. Olms, 1960.
Kaplan, *Hommes et la terre*	Kaplan, Michel. *Les hommes et la terre à Byzance du VI^e au XI^e siècle: propriété et exploitation du sol*. Paris: Université de Paris, 1992.
Lemerle, *Agrarian History*	Lemerle, Paul. *The Agrarian History of Byzantium from the Origins to the Twelfth Century: The Sources and Problems*. Galway: Galway University Press, 1979.
ODB	*The Oxford Dictionary of Byzantium*. Alexander P. Kazhdan, Editor-in-chief; Alice-Mary Talbot, Executive editor; An-

	thony Cutler, Editor for art history; Timothy E. Gregory, Editor for archaeology and historical geography; Nancy P. Ševčenko, Associate editor. 3 vols. New York and Oxford: Oxford University Press, 1991.
Pharr, *Theodosian Code*	Pharr, Clyde, et al. *The Theodosian Code and Novels, and the Sirmondian Constitutions*. Princeton: Princeton University Press, 1952.
Scott, *The Civil Law*	Scott, Samuel P. *The Civil Law; including the Twelve Tables, the Institutes of Gaius, the Rules of Ulpian, the Opinions of Paulus, the Enactments of Justinian, and the Constitutions of Leo*. 17 vols. Cincinnati: The Central Trust Company, 1931. Reprinted New York: AMS Press, 1973.
Skylitzes	Skylitzes, John. *Ioannis Scylitzae Synopsis historiarum*. Ed. Hans Thurn. Corpus fontium historiae byzantinae 5. Berlin and New York: Walter de Gruyter and Company, 1973.
Svoronos, *Novelles*	Svoronos, Nikos. *Les Novelles des Empereurs Macédoniens concernant la terre et les stratiotes*. Ed. P. Gounaridis. Athens: Centre de Recherches Byzantines, F.N.R.S. Fondation Culturelle de la Banque Nationale, 1994.
Theophanes continuatus	*Theophanes continuatus*, ed. Immanuel Bekker. Corpus scriptorum historiae byzantinae. Bonn, 1838.
Zepos, *JGR*	Zepos, Ioannes, and Zepos, Panagiotes. *Jus graecoromanum*. 8 vols. Athens, 1931. Reprinted Aalen: Scientia Aalen, 1962.
Zonaras	Zonaras, John. *Ioannis Zonarae Epitomae historiarum*. Ed. Maurice Pinder and Theodore Büttner-Wobst. 3 vols. Corpus scriptorum historiae byzantinae. Bonn, 1841-1897.

WESTERN REGIONS OF
THE BYZANTINE EMPIRE,
10th Century
BLACK
SEA
MACEDONIA
STRYMON
BOLERON
Constantinople
SEA OF
MARMARA
THESSALONIKI
AEGEAN
SEA
AEGEAN SEA
ANATOLIA
GREECE
PELOPONNESOS
IONIAN
SEA
SAMOS
MEDITERRANEAN SEA
0
100
200 km

BLACK SEA
PAPHLAGONIA
ARMENIAKON
CHALDIA
Constantinople
SEA OF MARMARA
OPTIMATOI
BOUKELLARION
OPSIKION
CHARSIANON
THEMES
CAPPADOCIA
Melitene
AEGEAN SEA
THRAKESION
ANATOLIKON
ARMENIAN
Euphrates R.
KIBYRRHAIOTAI
SELENKEIA
MEDITERRANEAN SEA
EASTERN REGIONS OF THE BYZANTINE EMPIRE, 10th Century
0 100 200 km

Introduction

I. THE CONTEXT OF THE LEGISLATION

1. The Macedonian Dynasty

From the early seventh century until its collapse in 1453 the Byzantine empire was ruled by nine different dynasties. The most illustrious of these was the so-called Macedonian dynasty (867-1056) whose span of nearly two centuries marks the great age of Byzantium.[1]

The dynasty takes its name from the native region of its founder, Basil I (867-886), who was born in the Byzantine province of Macedonia (modern Thrace). Its origins were anything but glorious. The son of a peasant, Basil made his way to Constantinople where he entered the service of the emperor Michael III. With great cunning and ruthlessness, he profited from the emperor's favour to rise from stable groom to co-emperor, marrying Michael's former mistress and murdering Michael's

[1]A list of the Macedonian emperors is given on p. 34. The Macedonian era is well covered by the historical sources, some of which shed light on the date or context of particular novels. The chronicles which provide the most useful information on the Macedonian land legislation are the following: the series of historical narratives and imperial biographies assembled to form the chronicle known as *Theophanes continuatus*, covering the years between 813 and 961 (cf. *ODB* 3: 2061-2062); the *Synopsis historiarum* of John Skylitzes, a court official active in the second half of the eleventh century, whose chronicle covers the years between 811 and 1057 (cf. *ODB* 3: 1924); and the *Epitomae historiarum* of John Zonaras, a court official active in the first half of the twelfth century, who wrote a chronicle covering the years from the Creation down to 1118 (cf. *ODB* 3: 2229). Also important is the manual on court ceremonial known as the *De cerimoniis*, compiled during the reign of Constantine VII (945-959), which contains a number of texts supplying useful details on Byzantine administrative and legal procedures (cf. *ODB* 1: 595-597).

Among modern surveys of the Macedonian period, George Ostrogorsky's *History of the Byzantine State* (New Brunswick, N.J., 1969), pp. 210-315, is still useful (as are his summaries of the primary sources on pp. 147-152, 210-217). More recent surveys include John Julius Norwich, *Byzantium. The Apogee* (London and New York, 1991); Mark Whittow, *The Making of Orthodox Byzantium, 600-1025* (Houndmills, Basingstoke, Hampshire and London, 1996), pp. 310-390; and Warren T. Treadgold, *A History of the Byzantine State and Society* (Stanford, 1997), pp. 446-579.

uncle, the Caesar Bardas, on the way. When at last none but Michael stood between him and supreme power, Basil completed his ascent by killing his benefactor and proclaiming himself emperor in September 867.

Although the crime of its founder haunted the dynasty until its end, it could not diminish the achievements of Basil I and his successors, whose efforts restored the Byzantine empire as the dominant power in the eastern Mediterranean by the early eleventh century. By the time of Basil II's death in 1025, Byzantine arms and diplomacy had won control of Cilicia, northern Syria, and the Armenian principalities to the east, Crete and Cyprus to the south, Bulgaria, and the Balkans to the west. The missions of Cyril and Methodios to Moravia and Bulgaria during the late ninth century, followed by increasing contacts with the Kievan Rus' during the tenth century, enabled the empire to extend its political and spiritual influence far beyond its borders through the conversion of the Slavs to Orthodox Christianity. In the domains of art and culture, the Macedonian era is renowned for its devotion to the heritage of the past and for its projects of codification and encyclopedism, a spirit of intellectual conservatism revealed most clearly in the great manuals on statecraft, military science, foreign affairs, court ceremonial, and compilations in various branches of knowledge.[2] But above all, the age was distinguished by the renewal of legal science and legislative activity — what Svoronos called "the crowning achievement" of the Macedonian emperors.

This legislative activity began with Basil I's plan for a revised corpus of law based on Justinian's corpus of law and subsequent codes. During his reign two new handbooks, the *Procheiron* and the *Epanagoge*, were produced, and a new compilation of laws in sixty books, known as the *Basilika*, was undertaken. This legal code, which supplanted the Justinianic corpus as the authoritative source of law in Byzantium, was completed during the reign of Leo VI (886-912); but as the sheer volume of the work made it too cumbersome for easy consultation, an abridged version of the *Basilika*, known as the *Synopsis basilicorum major*, was prepared during the tenth century and came into widespread use as a reference guide to the standard code of law.[3]

[2]Paul Lemerle, *Le premier humanisme byzantin* (Paris, 1971), pp. 267-300.

[3]For surveys of the major sources of Byzantine law, and the legislative texts of the Macedonian era, see Nicolaas van der Wal and J.H.A. Lokin, *Historiae Iuris Graeco-romani Delineatio. Les sources du droit byzantin de 300 à 1453* (Groningen, 1985), pp.

Valuable as they are for the history of the Byzantine legal tradition, these handbooks and compilations are derivative in character and shed only occasional light on the conditions of their time. Yet the tenth and eleventh centuries also saw the enactment of much new legislation bearing directly on contemporary affairs. Leo VI issued a collection of 113 novels dealing with a wide range of subjects;[4] succeeding emperors promulgated a series of novels which, in addition to those concerned with land tenure, pronounced on a variety of legal topics.[5] Accompanying the promulgation of these codes and enactments were the multiplication of judicial offices during the tenth century and the emergence of a professional judiciary attuned to the growing divergence between inherited legal traditions and current social realities.[6] Sometime in the 1030's a subordinate of the eminent judge Eustathios Romaios assembled the most remarkable work of Byzantine legal science, the *Peira*, a casebook representing an altogether new, if transitory, approach to the concept and application of law.[7]

These developments in law and jurisprudence during the Macedonian era form part of the general background to the land legislation of the tenth century. The discussion turns now to the texts themselves, their provenance, and type.

2. *The texts of the Macedonian land legislation*

A. The collection

The fourteen documents presented here in translation are those traditionally taken by scholars to form the land legislation of the tenth century.

78-97; Peter Pieler, "Ἀνακάθαρσις τῶν παλαιῶν νόμων und Makedonische Renaissance," *Subseciva Groningana* 3 (1989): 61-77; idem, "Byzantinische Rechtsliteratur," in *Die hochsprachliche profane Literatur der Byzantiner*, ed. Herbert Hunger (Munich, 1978), 2: 343-480.

[4]Pierre Noailles and Alphonse Dain, *Les Novelles de Léon VI le Sage* (Paris, 1944).

[5]Cf. Zepos, *JGR* I: 192-274.

[6]Paul Magdalino, "Justice and finance in the Byzantine state, ninth to twelfth centuries," in *Law and Society in Byzantium, Ninth-Twelfth Centuries*, ed. Angeliki E. Laiou and Dieter Simon (Washington, D.C., 1994), pp. 93-115; Marie Theres Fögen, "Legislation in Byzantium: A political and a bureaucratic technique," in *Law and Society in Byzantium*, pp. 53-70; see also Andreas Schminck, "Zur Einzelgesetzgebung der makedonischen Kaiser," forthcoming in *Fontes Minores*.

[7]Nicolas Oikonomides, "The 'Peira' of Eustathios Romaios: An abortive attempt to innovate in Byzantine law," *Fontes Minores* 7 (1986): 169-192.

They were listed as follows by Paul Lemerle in his study of Byzantine agrarian history:[8]

A Novel of Leo VI (ca. 900): cf. Dölger, *Regesten*, no. 558
B Novel of Romanos I Lekapenos (922 or 928): cf. Dölger, *Regesten*, no. 595
C Novel of Romanos I Lekapenos (934): cf. Dölger, *Regesten*, no. 628
D Novel of Constantine VII Porphyrogennetos (947): cf. Dölger, *Regesten*, no. 656
E Novel of Constantine VII Porphyrogennetos (ca. 947): cf. Dölger, *Regesten*, no. 673
F Rescript of Romanos II (961): not listed in the *Regesten*
G Novel of Romanos II? (962?): cf. Dölger, *Regesten*, no. 690
H Rescript of Nikephoros II Phokas (between 963 and 969): cf. Dölger, *Regesten*, no. 720
J Novel of Nikephoros II Phokas (964): cf. Dölger, *Regesten*, no. 699
K Novel of Nikephoros II Phokas (967): cf. Dölger, *Regesten*, no. 712
L Novel of Nikephoros II Phokas (967?): cf. Dölger, *Regesten*, no. 719
M Rescript of Nikephoros II Phokas (between 963 and 969): cf. Dölger, *Regesten*, no. 721
N Novel of Basil II (988): cf. Dölger, *Regesten*, no. 772
O Novel of Basil II (996): cf. Dölger, *Regesten*, no. 783

With the exception of **A** and **M**, these edicts have come down in the appendices of the *Synopsis basilicorum major*.[9] As noted above, the convenience of the *Synopsis* as an abridged reference guide to the unwieldy *Basilika* commended it to Byzantine jurists. In the course of successive recopyings the *Synopsis* accumulated two appendices (designated A and B) containing a diverse assembly of legal texts, among which is included a series of imperial novels issued from the tenth to the twelfth centuries.

[8]Lemerle, *Agrarian History*, pp. 85-89.

[9]The manuscript tradition is described in detail by Nicolas Svoronos, *La Synopsis major des Basiliques et ses appendices* (Paris, 1964).

The preservation of the novels in two separately constituted appendices has made for a complex tradition; what is more, no fewer than eleven versions of the appendices have been identified from the period between 950 and 1250. As concerns the land legislation, some novels have been preserved in the same form in one or both of the appendices, whereas others exist in one version in Appendix A and in another in B; some are preserved in extracts or as epitomes, while others have been annotated or interpolated. The titles accompanying the novels did not form part of the original text but represent the additions of scribes and commentators whose ascriptions are not uniformly reliable. Not surprisingly, it has proven a very difficult task to establish a definitive edition of these documents, and questions concerning the authenticity, textual integrity, date, and attribution of certain novels in the collection are more easily raised than answered.

B. Novel and rescript

Although it is common practice to refer to the legislative documents collectively as novels, there is a distinction to be made in form and function between a novel and a rescript.[10]

Like the English statute, the Byzantine novel (Latin *novella constitutio*, Greek *neara nomothesia*) was a formal document enacting new legislation. In keeping with the Roman legal maxim, *quod principi placuit legis habet vigorem* ("what has pleased the emperor has the force of law"), the novel presented the legal provisions or policy that the emperor wished his subjects to follow. As God's regent on earth and the living image of the law (*nomos empsychos*), the Byzantine emperor wielded absolute authority. The enactment of law and the dispensation of justice affirmed the emperor's exalted authority and fulfilled his divinely appointed duty to safeguard God's creation.[11] And so not only do the

[10]Franz Dölger and Johannes Karayannopulos, *Byzantinische Urkundenlehre* (Munich, 1968), pp. 71-87; Pieler, "Rechtsliteratur," pp. 351-365; Rosemary Morris, "The powerful and the poor in tenth-century Byzantium: Law and reality," *Past and Present* 73 (1976): 5-7.

[11]The ideal imperial attributes (the emperor as impartial judge, intercessor for the weak, healer, etc.) are catalogued by Herbert Hunger, *Prooimion. Elemente der byzantinischen Kaiseridee in den Arengen der Urkunden* (Vienna, 1964), and are noted in each translation. See also J.H.A. Lokin, "The significance of law and legislation in the law books of the ninth to eleventh centuries," in *Law and Society in Byzantium*, pp. 71-91.

novels making up the land legislation invoke the traditional prerogatives and duties of the imperial sovereign, they also leave no doubt as to the emperors' interest and direct involvement in the formulation of law. In edicts such as Romanos Lekapenos's novel of 934 (**C**), Nikephoros Phokas's novel of 964 (**J**), or Basil II's legislation of 996 (**O**), the emperor's own opinions and judgements are forcefully expressed. Once issued, a novel was valid in perpetuity, although emperors could and did promulgate new laws modifying or superseding those of their predecessors.

As an official enactment, the novel conformed to a standard pattern of composition. The text normally consisted of four parts: the *prooimion*, a rhetorical preface rehearsing the principles on which the legislation was based; the *narratio*, a discussion of the issues involved; the *dispositio*, stating the corrective measures to be applied; and the epilogue, justifying the measures taken and enjoining application of the new law. The edicts issued by Romanos Lekapenos in 934 (**C**), Constantine VII in 947 (**D**), and Nikephoros Phokas in 964 (**J**) stand as examples of the Byzantine novel in this full form, in which "the philosophical reasoning which lay behind action, the theoretical consideration of problems and their implications, accompanied practical dispensations."[12]

Other novels in the collection have come down in a more compact form in which the rhetorical element is less pronounced. A concise preface introduces the issues to be resolved and leads to the proposal of corrective measures, but the text concludes without an epilogue (e.g. **B**, **E**, **K**, **O**).

The collection also contains three documents known as rescripts (**F**, **H**, **M**). As opposed to a novel, a rescript (from the Latin *rescriptum*; the Greek term is *lysis*, or "solution") was a response to a query or request for a ruling (*anaphora*) on a point of law submitted to the emperor by an official. The introduction to **F**, a rescript drafted in the name of Romanos II by the *magistros* Theodore Dekapolites in response to a provincial judge, shows the process at work. In his introduction Dekapolites states that the task of replying to the judge's questions has been assigned to him by imperial command, whereupon he reviews the relevant legislation and proposes solutions to the cases raised in the judge's petition. It is a feature of this, as of all rescripts, that the legislator addresses the recipient directly in the second person.

[12]Morris, "Powerful and the poor": 6.

Where novels were normative, rescripts were interpretative, but as their pronouncements were held to be of general application, rescripts carried the same legislative force as novels. Rescripts too followed a standard model of composition (preface, statement of the facts, rulings, and epilogue) although the rescripts in our collection adhere to this pattern only in part.[13]

3. The scope and purpose of the land legislation

The tenth century, the greatest era of Byzantine military and cultural expansion, was at the same time a period of domestic turmoil within the Byzantine empire. For this period, during which the imperial land legislation was promulgated, saw the Macedonian emperors vie for supremacy against a rising provincial aristocracy whose aggrandisement disrupted the imperial fiscal system and the order of rural society, and hence the ability of the emperors to maintain full authority over their subjects. The contest pitted the crown against the provincial magnates in a struggle for control over productive agricultural lands and the labour necessary to keep these lands productive, a struggle which also compelled the crown to combat the abuse of office by imperial and ecclesiastical officials.[14]

By the tenth century the fiscal system of the Byzantine empire had come to rest on a system of rural tax districts. The purpose of the land legislation was to protect two institutions essential to the proper functioning of this system. The first was the village communes, together with their inhabitants, the peasant landowners, whose taxes and labour represented the crown's principal source of revenue and services. The second was known as the "soldiers' properties" or "military lands" whose holders, called *stratiotai*, provided the Byzantine army with the bulk of its manpower and resources.

The protection of the village communes took the form of restricting "outside" buyers from acquiring property in these communities and using this as a foothold to gain control over the lands and residents of the village. The targets of these restrictions were the persons to whom

[13]Successive copyings of rescripts filtered out the prefaces and epilogues alluding to the particular circumstances of each case. The *narratio* and *dispositio* treating the legal issues were of lasting interest.

[14]James Howard-Johnston, "Crown lands and the defence of imperial authority in the tenth and eleventh centuries," *Byzantinische Forschungen* 21 (1995): 76.

the legislators refer as the *dynatoi* (the "powerful"), that is, members of the civil, military or ecclesiastical hierarchies, or provincial magnates eager for productive land to expand their wealth and dominance; and the monastic foundations, which as beneficiaries of bequests or donations of peasant lands began to accumulate large estates during the tenth century. The defence of the soldiers' properties against the same acquisitors involved granting privileged status to these lands and their owners, and placing tight restrictions on the sale or exchange of military properties.

These protective measures and restrictions were introduced in reaction to changing conditions in the Byzantine countryside, above all the threat to the crown's system of taxation and judicial authority posed by land-hungry magnates and growing monastic estates. Before we proceed to the immediate concerns and objectives of the novels, the general aims of the land legislation as a whole should be identified: first, to assert the unique authority of the crown and the central government in Constantinople, displayed and confirmed by direct taxation and by the administration of justice down to the level of the village commune and its humblest inhabitant; and second, to prevent contenders for local power, land, labour, and wealth from coming between the crown and its chief sources of fiscal revenues and military service.

The fourteen edicts in the legislation can be divided into three categories according to the subjects which they address: one group deals with the sale or transfer of civil lands, and the protection of the village communes (**A B C D K L O**); the second treats the military lands and their holders (**E F G H K M**); and a third is concerned with the acquisition of property by monastic and charitable institutions (**C J O**).[15] Looming behind these issues is the social conflict portrayed in the novels between persons referred to as "the powerful" and as "the poor." We turn now to the main institutions in the Byzantine countryside — the village communes, the military lands, and the monasteries — and the opposition between the powerful and the poor.

[15]Each group is reviewed separately by Lemerle, *Agrarian History*, pp. 90-108 (the village commune); pp. 108-114 (church and monastic lands); pp. 115-156 (the military properties).

II. The Byzantine countryside in the tenth century

1. The village commune

The novels and contemporary sources portray the village commune as the principal institution in the Byzantine countryside. The term employed by the sources, *chorion*, applies to the village commune as a territorial unit, a social and economic unit, and a fiscal unit. We will take each of these three senses in turn.

As a territorial unit, the contemporary manual on taxation known as the *Fiscal Treatise* indicates that the village commune could take one of two forms.[16] The first (and apparently more common type), the *chorion* properly speaking, was a concentrated settlement in which the villagers dwelt in close proximity. In certain circumstances, however, villagers might prefer to live on farmsteads (*agridia*) some distance from the seat of the village, while the more affluent residents might own estates (*proasteia*) within the fiscal boundaries of the village commune, where they maintained labourers (free and servile) to work the land. The second type of rural settlement was a dispersed habitat known as the *ktesis*, an aggregate of scattered hamlets and lands within the same fiscal delimitation.

The village commune in both forms had a complex social and economic profile.[17] The sources attest varying levels of prosperity, status, and relationships among the villagers, who ranged from large, wealthy landowners, small but independent landholders, hired labourers, dependent peasants, tenant farmers, down to impoverished or ruined peasants, and slaves. In addition to these civil inhabitants, each village commune included land-owning soldiers (*stratiotai*) whose properties supported their military obligations, as well as religious or charitable foundations of varying size and means. The village inhabitants were connected to one

[16]*Fiscal Treatise* 115^{21-43} (English translation by Charles Brand, "Two Byzantine treatises on taxation," *Traditio* 25 [1969]: 35-60). On the Byzantine village and village commune, see *ODB* 3: 2168, 2168-2169; for a full discussion, see Michel Kaplan, *Hommes et la terre*, pp. 89-134, 185-218.

[17]Kaplan, *Hommes et la terre*, pp. 256-280; see also Alan Harvey, *Economic Expansion in the Byzantine Empire, 900-1200* (Cambridge, 1989), pp. 35-79. The degrees of kinship, neighbourhood, and proximity laid out in Romanos Lekapenos's law on preemption (**B**, section I.1-4) show the complex network of relations between the village commune's inhabitants.

another by the bonds of kinship, neighbourhood, and joint possession or use of undistributed common land, all of which gave relatives and neighbours an interest in the sale or transfer of property. Above all, they were connected by joint tax obligations.

Byzantine tax officials regarded the *chorion* and the *ktesis* as one and the same thing, and it is as a fiscal unit that the village commune is described in the sources. The village commune was synonymous with the basic fiscal unit (*homas*). Briefly, this tax unit was assessed and assigned a sum total tax payment, of which each villager had to pay a share (calculated against the size of his holdings, extra obligations, or exemptions).[18] The fundamental principle of this system, however, was the collective responsibility for tax payments binding on all members of the village commune. In other words, if for some reason a peasant defaulted on his portion of the tax burden, his fellow villagers and taxpayers were obliged to provide for his share. This joint tax obligation ensured that the crown would receive the full tax amount due from each fiscal unit; and it was by this shared fiscal responsibility that the members of a village commune were defined and distinguished from "outside" persons.

The importance of the rural tax units to the welfare of the state was expressed in these words by Romanos Lekapenos in his novel of 934 (C): "the settlement of the population displays the great benefit of its function — the contribution of taxes and the fulfillment of military obligations — which will be completely lost should the common people disappear." The urgency of the emperor's words is noteworthy, for during the early tenth century the stability and integrity of the village communes were seriously threatened. The intrusion into village communes of acquisitive magnates who used their leverage to gain more land and a position of local dominance had already aroused imperial concern when the situation in the Byzantine countryside was thrown into chaos by a severe famine in 927-928. So devastating was its effect that many ruined peasants found themselves compelled to abandon their lands or sell them off cheaply, circumstances that played into the hands of the

[18]The fiscal system is discussed comprehensively by Nicolas Oikonomides, *Fiscalité et exemption fiscale à Byzance (IX^{e}-XI^{e} s.)* (Athens, 1996), pp. 24-151. Good summaries are available in Rosemary Morris, *Monks and Laymen in Byzantium, 843-1118* (Cambridge and New York, 1995), pp. 167-169; and *ODB* 2: 787-788.

wealthy and powerful who exploited the disaster to amass large tracts of land at little or no cost. The protection of the village communes therefore entailed placing restrictions on land purchases by outside buyers, particularly the magnates, and introducing measures to enable small landowners to reclaim properties lost in the wake of the famine. To protect the village communes the imperial legislators resurrected two measures long established in Roman law.

A. Pre-emption and prescription

The tenth-century legislation protecting the village communes falls into three main stages. The initial stage, represented by the first novel of Romanos Lekapenos (**B**), saw the crown attempt to seal these units against outsiders by restricting the alienation of property to fellow members and taxpayers within the same village commune. The instrument of this policy was the rule of pre-emption (*protimesis*), or right of first refusal, which obliged peasant smallholders to notify their fellow villagers of their intention to sell their property. In other words, prospective sellers had to offer their lands first to fellow members of the village commune connected to them by kinship, association, proximity, and joint tax liability before they could alienate their lands to any other buyer.[19]

Lekapenos's novel on pre-emption reveals the imperial alarm at the encroachment of the *dynatoi* upon the village communes even before the advent of the famine. As the pretext for his decree, Lekapenos declared that his purpose was to resolve a contradiction between two laws in existence from late Roman times, one permitting the unrestricted alienation of property, the other forbidding sales of land to persons from outside the village community; but his law also superseded an earlier decree, attributed to Leo VI (**A**), which had given peasant proprietors the right to sell their land to any buyer willing to assume the attendant tax burden. This ruling, introduced to permit peasants in difficult circumstances to sell their land without interference from their neighbours, had allowed outside purchasers entry into the village communes which the pre-emption law and subsequent land legislation attempted to close off.[20]

[19]On pre-emption (*protimesis*), see *ODB* 3: 1743-1744. The details of Romanos Lekapenos's pre-emption rule are discussed in greater detail in the introduction to **B**, pp. 38-39 below.

[20]The authenticity of Leo's novel is debated, but it has been accepted as the starting point of the land legislation by Lemerle and Kaplan, as well as by other scholars.

The pre-emption law was by no means impermeable, however, and the *dynatoi* readily found ways to circumvent the rules.[21] Nor did the law prove adequate to cope with the upheaval caused by the famine. The twenty years following the famine represent a second stage in the land legislation. During this time the novels take on a more decisive tone and adopt a more peremptory approach as the imperial legislators sought to undo the effects of the disaster, switching their focus from the rules concerning the alienation of property to those governing its recovery by small landowners ruined by the famine or victimised by the depredations of the *dynatoi*. The rule of pre-emption, so carefully elaborated in Lekapenos's novel, remained in force, yet it is barely mentioned in the laws issued after the famine. We find instead the introduction of draconian measures cancelling acquisitions of land by the *dynatoi* retroactively to the year of the famine and barring them from further transactions, while restoring properties to their original owners and setting terms and conditions for the reimbursement of evicted *dynatoi* (**C** and **D**). But the recalcitrance of the *dynatoi* even in the face of these measures induced imperial legislators to bring another legal instrument to bear on the recovery of property.

This was the rule of prescription (known in Roman law as the *longi temporis praescriptio*, or possession by prescriptive right),[22] the introduction of which ushers in the third stage in the land laws. Whereas pre-emption had restricted members of a village commune from selling their lands to outsiders, the prescription rule offered peasants who had sold or lost their lands unlawfully a chance to reclaim them. The rule held that persons who had acquired land improperly, by coercion or in bad faith, acquired ownership only after the passage of forty years without contest from the original owner or his heirs. This meant that peasants who had alienated their lands against the rules, under duress, or for other considerations, had a fixed period of time within which to reclaim

[21]Both George Ostrogorsky, "The peasant's pre-emption right," *Journal of Roman Studies* 37 (1947): 117-126, and Helen Saradi, "On the '*archontike*' and '*ekklesiastike dynasteia*' and '*prostasia*' in Byzantium, with particular attention to the legal sources: A study in social history of Byzantium," *Byzantion* 64 (1994): 99-117, cite cases from the tenth century onwards in which powerful persons circumvented the regulations of the pre-emption law.

[22]Barry Nicholas, *An Introduction to Roman Law* (Oxford, 1962), pp. 128-129; Raymond Monier, *Manuel élémentaire du droit romain* (Darmstadt, 1970), 1: 428-430.

them on the grounds that they had been parties to unfair or illegal transactions. First cited in Constantine VII's novel on the military lands (**E**, ca. 947), the prescription rule also came to apply to civil properties, as shown by Nikephoros Phokas's novel of 967 (**K**).[23]

Just as the *dynatoi* were able to sidestep the law of pre-emption, so too did they fend off claims based on the prescription rule. In his novel of 996 (**O**) the emperor Basil II denounced the powerful families whose wealth and influence, built up over generations, enabled them to forestall or rebuff claims on lands extorted from the poor. To tilt the balance in favour of the poor, Basil introduced drastic measures requiring the magnates to show proper title deeds for the lands they had acquired, and abolished the forty-year term. From this time forward, declared the emperor, the peasant's right of reclamation was subject to no time limit at all.

B. The survival of the village communes

With Basil II's novel of 996 the legislation dealing with the village communes and the peasant landholders came to an end. While it is clear that this novel and its predecessors remained in force during the eleventh century and beyond, it is less easy to determine their effect: did the imperial legislators achieve their aim to preserve the system of the village communes and the peasant smallholders?

The once standard reply to this question held that they did not, and that the failure of the imperial land legislation led to the disappearance of the village communes and free peasant landowners during the eleventh century. This in turn led to a decline in agricultural production and hastened the decentralisation of the empire, which fatally undermined its strength. But this thesis, developed by George Ostrogorsky, is now rejected as too sweeping. Recent studies challenging his views have developed a more measured, not to say a more positive, assessment of the imperial response to the situation in the Byzantine countryside during the tenth and eleventh centuries.[24]

[23]Cf. *ODB* 2: 1249. For a discussion of the prescription in the tenth-century legislation, see now Danuta Górecki, "Prescription in the Macedonian novels on pre-emption: A linguistic, legal, and political inquiry," *Byzantinoslavica* 58 (1997): 113-130.

[24]The question is reviewed by Paul Magdalino, *The Empire of Manuel I Komnenos, 1143-1180* (Cambridge, 1993), pp. 160-171, with further references.

It is undeniable that the multiplication of large aristocratic estates from the tenth century onwards displaced the village commune as the principal social and fiscal unit in the Byzantine countryside. It is equally true that even by the mid-tenth century many peasants had transferred their lands and labour to magnate landowners, and that tenant farmers and peasants in various categories of dependence (*paroikoi*) outnumbered free smallholders. The growth of aristocratic estates and the changes in the status of the peasantry have been attributed in part to the very fiscal system which the legislation had tried to safeguard. The onerous taxes and services it imposed, when coupled with the burden of collective tax responsibilty and compounded by natural disasters such as the famine, drove peasants to abandon their lands and enter the service of powerful landowners. Abandoned land, in turn, escheated to the crown after a thirty-year period and could be transferred to new owners, who were initially responsible for only a fraction of the land's tax burden; and as the purchase of abandoned land was not barred to the *dynatoi*, they could establish a foothold in the the village communes — otherwise closed to them — from which to gain control over village lands and labour. Why the imperial legislators did not take this loophole into account, much less close it, is not clear.[25]

Yet by no means did the institution of the village communes die out entirely, clinging to life most tenaciously in regions where imperial authority was strongest and where village society was firmly entrenched.[26] Nor did the peasant smallholders vanish altogether, although they were a lesser element among the increased numbers of dependent peasants. The reassertion of the law of pre-emption by the emperor Manuel Komnenos (1143-1180) is the most obvious sign of their continued existence well into the twelfth century.[27]

[25]The problem of abandoned land is seen as a crucial one during the tenth century: Kaplan, *Hommes et la terre*, pp. 388-408, 440-444. The remedy introduced during the eleventh century was the creation of the office of the *epi tôn oikeiakôn* which supervised the acquisition and exploitation of abandoned lands by the crown. This office appears to have been created during the reign of Basil II: see Nicolas Oikonomides, "L'évolution de l'organisation administrative de l'Empire byzantin au XI[e] siècle (1025-1118)," *Travaux et Mémoires* 6 (1976): 136-138, and idem, "Terres du fisc et revenu de la terre aux X[e]-XI[e] siècles," in *Hommes et richesses dans l'Empire byzantin*, ed. Vassiliki Kravari, Jacques Lefort, and Cecile Morrisson, (Paris, 1991), 2: 321-337.

[26]See below, pp. 30-31.

[27]On the factors influencing the fate of the village commune, see Howard-Johnston, "Crown lands": 79-82. The law of pre-emption was restated in the twelfth century: see

The imperial legislation seems to have succeeded in preserving the village communes and independent peasantry only in part; but in assessing the effectiveness of the land laws, it is important to recognise that the emperors used means other than the law to protect their authority and fiscal interests. The creation of crown lands (curatories) and domains (*episkepseis*), worked by peasants taken into crown service and administered directly by imperial officials for the profit of the treasury, was an effective counterweight to the growth of aristocratic estates. As the crown came to rely on revenues from these sources, the village communes declined in importance, while a revised system of taxes and exemptions applying to aristocratic estates rendered the tenth-century legislation, and the institutions it was designed to preserve, obsolete. It seems more instructive to conclude not that the land legislation failed, but rather that the central authority ultimately proved itself capable of adapting to changing conditions in the countryside through the development of a revised fiscal system.

2. The military lands

The years between 945 and 969 saw the promulgation of a series of new laws dealing with the category of land known as the "soldiers' properties" or "military lands," and with the *stratiotai* who owned these lands. Before we examine the laws on the military lands and the *stratiotai*, a brief outline of the Byzantine army and the system of military service will put this legislation in context.

A. The Byzantine army and the military lands

The Byzantine army of the tenth century consisted of two main parts. One was known as the *tagmata*, or the four imperial regiments based in Constantinople, whose soldiers (called *scholarioi*) were recruited, equipped, and paid by the state;[28] the other, and much larger, part was called the *themata*, or the armies stationed in the themes (military

Ruth Macrides, "Justice under Manuel I Komnenos: Four novels on court business and murder," *Fontes Minores* 6 (1984): 199-204.

[28]The four *tagmata* were the *Scholai*, *Exkoubitores*, *Vigla*, and *Hikanatoi*; a fifth, the *Athanatoi*, was created in 970. On the history and structure of the *tagmata*, see John Haldon, *Byzantine Praetorians. An Administrative, Institutional and Social Survey of the Opsikion and Tagmata, ca. 580-900* (Bonn, 1984), and Nicolas Oikonomides, *Les Listes de préséance byzantines des IX^e et X^e siècles* (Paris, 1972), pp. 329-335.

districts or provinces) into which the empire's territory was divided (see Map on p. xiv).

The origins of the theme system lie in the seventh century, when the Byzantine empire was forced to reorganise its defences and provincial military administration in response to the Arab invasions.[29] As a military and territorial unit, each theme was commanded by a *strategos* (general) who oversaw the recruitment and maintenance of the forces in his theme and led them on campaign. The soldiers settled in the theme and enrolled in military service (*strateia*) were known as *stratiotai*, who either went on active service themselves or supported a soldier sent in their stead. Whether they served in person or for another, the soldiers of the provincial armies were required to supply their own horses and equipment when mustered for campaign. Although these soldiers received payment for campaign service, as well as cash allowances and a share of the spoils, they met this requirement to equip themselves largely from the income derived from their lands, known in Greek as the *stratiotika ktemata*, and translated into English as the "military lands" or the "soldiers' properties."[30]

The origins of the military lands are obscure, but by the beginning of the tenth century the basic features of the institution become clear. The *strateia* was incumbent upon the person registered in the tax-rolls as a *stratiotes*, whose lands provided him with the means to support a certain level of military service or obligations. The *strateia* was at first personal and hereditary, passing from father to son, although the military service did not necessarily have to be carried out by the *stratiotes* himself, and it could be maintained singly or jointly. An indigent *stratiotes*, for example, might have contributors (*syndotai*) assigned to him to help fulfill his *strateia*.[31] What is also clear is that until the mid-tenth century this system was regulated by custom rather than codified by law. The primary motivation behind the first imperial decree on the military lands was to impose formal legal controls on these properties and their holders.

[29]On the creation of the theme system, see John Haldon, *Byzantium in the Seventh Century*, 2nd ed. (Cambridge, 1997), pp. 208-253, with further references.

[30]On the military lands and *stratiotai*, see John Haldon, "Military service, military lands, and the status of soldiers: Current problems and interpretations," *Dumbarton Oaks Papers* 47 (1993): 1-67; and Kaplan, *Hommes et la terre*, pp. 231-255.

[31]Oikonomides, *Fiscalité et exemption*, pp. 37-40, 117-121; Haldon, "Military service": 29-41.

B. The aims of the legislation on the military lands

The novels on the military lands present four main objectives: to restrict the alienation of the soldiers' properties; to enable the *stratiotai* or their heirs to keep or recover their military lands; to ensure that persons fairly acquiring military lands maintained the level of military service registered to the lands; and to prevent the *dynatoi*, whether military officials or magnates, from bringing *stratiotai* into their own service. At the same time, the novels and other contemporary sources indicate that the military lands and the *strateia* were undergoing significant changes as the structure and recruitment of the Byzantine army were transformed throughout the tenth and eleventh centuries.

The laws concerning the military lands begin with the novel issued by Constantine VII sometime around the year 947 (E). The enactment of this law and its successors must be seen in connection with the overall purpose of the land legislation to preserve the existing system of taxation and services; but there is another, more immediate, motive behind Constantine's initial legislation. In January of 945 Constantine had ousted his co-rulers Stephen and Constantine Lekapenos with the aid of the general Bardas Phokas and his sons Nikephoros and Leo. Once established as sole ruler, Constantine rewarded his supporters by promoting them to the high command of the Byzantine army. Under the leadership of the Phokas family the Byzantines embarked on an ambitious policy of conquest against the Muslims in Cilicia, northern Syria, and Crete, a project which demanded the consolidation and protection of the empire's principal source of military strength, the military lands and the *stratiotai*. The opening words of Constantine's decree, linking the security of the state with the welfare of the army, express the emperor's wholehearted endorsement of his commanders' military programme.

Constantine's first step was to assign a standard value to the properties supporting a soldier's military service: the *strateia* was now fixed by law at a rate of four pounds of gold for a cavalryman, and two pounds of gold for a sailor. In other words, according to the calculations of Byzantine military administrators, a soldier serving in the *themata* required property worth 288 gold coins to outfit himself with the horse, armour, weapons, and other equipment which constituted his basic service obligations.[32] A military property of this size and value was equi-

[32]The standard Byzantine gold coin, the *nomisma*, was struck at 72 to the pound.

valent, roughly speaking, to two *zeugaria* (the *zeugarion* was the amount of land which a team of oxen could plough in a season), which would imply that a cavalryman's *strateia* was supported by the agricultural labour of two households. Although the rate of four pounds of gold must be taken as an average total only, as a fiscal value it seems to have defined the "right" amount of property for a *stratiotes* in the eyes of imperial administrators. The crown exempted military lands from certain taxes to allow the *stratiotai* sufficient means for their well-being and military obligations, but did not wish to grant more exemptions than were necessary. The limit of four pounds of gold served to distinguish *stratiotai* entitled to the basic exemptions from those in need of greater assistance.[33]

The legal and fiscal definition of the cavalryman's *strateia* at four pounds of gold seems realistic enough to represent a common level of landed wealth among *stratiotai*, although the number or proportion of *stratiotai* assessed at this rate cannot be gauged. Yet there were certainly *stratiotai* whose landed wealth fell short of this value and who consequently could not fulfill the *strateia* of a cavalryman, as, for instance, the Armenian *stratiotai* who received small plots of land in the frontier zones in return for service as infantrymen (**H**). As noted above, the law also made provision for impoverished *stratiotai* unable to meet their military obligations: they could be grouped with other *stratiotai* as joint contributors to a single *strateia*; they could be transferred to the irregular forces or placed on garrison duty; or, in cases of extreme indigence, they could receive a temporary exemption from the *strateia*.[34]

The emperor's main purpose in fixing the *strateia* at four pounds of gold, however, was to set a minimum inalienable value upon the military lands — in other words, the *stratiotes* was not permitted to sell any of his military lands assessed at or below this value. Since the majority of *stratiotai* would have possessed lands assessed at or below four pounds of gold, the limit served two purposes at once: to block transactions in military property, and to establish a criterion by which to compel the return of alienated military properties to their original owners.[35]

[33]Nicolas Oikonomides, "The social structure of the Byzantine countryside in the first half of the tenth century," Σύμμεικτα 10 (1996): 110-115.

[34]See below on **E**, pp. 73-74.

[35]The use of the four pound limit, subsequently raised to twelve pounds by Nikephoros Phokas, as a minimum inalienable value is discussed at greater length in the introduction to **M**: see below, pp. 104-106.

The restrictions on the alienation of military land applied even in cases where a *stratiotes* owned registered military property valued above the minimum inalienable rate. According to the legislation of Constantine VII, lands registered in the tax-rolls as military could not be sold at all, nor could their legal status change once they had been formally registered as military lands. The effect of these rules was to put the military lands in a category distinct from civil properties, carrying privileges and fiscal exemptions, and to give the crown greater control over the disposal of military land.[36]

It is evident from the land legislation that during the tenth century the *strateia*, originally incumbent upon the person of the *stratiotes*, came to be attached to the military lands themselves. This transition, confirmed by the provisions in the laws stipulating that persons acquiring military land must be willing and able to assume the burden of service registered to the property,[37] served the crown's interest since the land was a fixed and hence more easily controlled resource. The revenue from the property could now support the *strateia* in three ways: through the personal military service of the *stratiotes* enrolled upon it; through the service of another sent in his stead; and, an option exercised with increasing frequency throughout the tenth century, through the commutation of the *strateia* into a cash payment which could be used to engage full-time soldiers and foreign mercenaries.

The recruitment of such soldiers, already well in evidence by the mid-tenth century, accelerated during the reign of Nikephoros Phokas (963-969), whose policies mark a turning point in the history of the Byzantine army.[38] His decree raising the minimum inalienable value of military lands from four to twelve pounds of gold (**M**) was meant to bar transactions in military property altogether, and seems to have been part of an effort to register all military lands so as to exact the maximum military taxes and services from his subjects. What Phokas wished to

[36]Haldon, "Military service": 29-41; Danuta Górecki, "The *strateia* of Constantine VII: The legal status, administration and historical background," *Byzantinische Zeitschrift* 82 (1989): 157-176; Paul Magdalino, "The Byzantine army and the land: From *stratiotikon ktema* to military *pronoia*," in *Byzantium at War (9th-12th c.)*, ed. Nicolas Oikonomides (Athens, 1997), pp. 18-19.

[37]This development is clearly evident in the second section of **H**; see Haldon, "Military service": 32-34.

[38]Paul Lemerle, *Cinq études sur le XI^e siècle byzantin* (Paris, 1977), pp. 263-271.

secure by these measures, however, was not the personal military service of the *stratiotai*, but a contribution of money and supplies with which to build up an army composed of fully equipped professionals. From this time on, the *strateia* was steadily (though never completely) commuted from a personal military obligation into a cash payment. As the reliance on foreign mercenaries increased during the eleventh century, the old thematic armies, and the military lands which had been the basis of their support, gradually disappeared.[39]

The legislation protecting the military lands also defended the interests of the *stratiotai* themselves. Like the peasant smallholders, the *stratiotai* had been affected by the famine and subjected to the depredations of military officials and the *dynatoi*. Illegal or forced transactions were summarily cancelled, with the military properties reverting to the *stratiotai* or their heirs, and the rule of prescription was brought into the land legislation to assist the *stratiotai* in the recovery of their property. It was not only the loss of military land which the imperial legislators feared, however; it was also the loss of soldiers, as military officials or *dynatoi* coerced or enticed *stratiotai* into their own service as dependent peasants or soldiers in personal retinues. Constantine's legislation condemned this practice and imposed financial penalties on persons who had illegally taken *stratiotai* into their personal service and thereby deprived the army of able-bodied soldiers.

The real, if unstated, concern behind these sanctions was the growth of private armies loyal to powerful magnates. Private contingents of armed retainers formed the core group among the kinsmen, clients, and dependents making up the aristocratic *oikos* or household as it is depicted in the sources of the tenth and eleventh centuries.[40] The soldiers making up these militias acted as their master's escort and bodyguard, and accompanied him as a personal contingent on campaign. In addition to serving in these roles, they provided the magnate with an armed force with which to assert his influence on a local level. The attempts to

[39]Haldon, "Military service": 49-53.

[40]The significance of these armed retinues in the military aristocrat's entourage was first recognised by George Ostrogorsky, "Observations on the aristocracy in Byzantium," *Dumbarton Oaks Papers* 25 (1971): 12-16; see also Jean-Claude Cheynet, *Pouvoir et contestations à Byzance (963-1210)* (Paris, 1990), pp. 303-313. On the composition of the aristocratic household, see Paul Magdalino, "The Byzantine aristocratic *oikos*," in *The Byzantine Aristocracy, IX to XIII Centuries*, ed. Michael Angold (Oxford, 1984), pp. 92-111.

check the growth of such private militias signal the imperial legislators' awareness of this coercive instrument and its potential threat to the crown's authority.

No further legislation on the military lands appears after the reign of Nikephoros Phokas. There is no reference to them in Basil II's novel of 996, and their gradual disappearance during the eleventh century has already been noted. The replacement of the provincial levies by professional soldiers and foreign mercenaries, supported by the fiscalised *strateia* and new obligations (such as the billeting of foreign soldiers on the civil population), was one change that brought about the end of this institution. Another was the demilitarisation of the empire once the Byzantines had established control of northern Syria and Bulgaria by the early eleventh century. With the cessation of military expansion and the seemingly reduced threat of attack, the armies based in the interior provinces were deemed unnecessary and disbanded; and with their dissolution the old system of the military lands eventually passed out of existence.

3. The monasteries

When compared with monasticism in western Europe, with its international orders of monastic communities linked by adherence to a single set of rules and practices, Byzantine monasticism was highly idiosyncratic. Byzantine monasteries and pious houses were institutions unto themselves, with each one functioning according to the organisational and spiritual precepts laid down by its founders. Monasteries could be imperial, patriarchal, or episcopal foundations, while others were either in private hands or completely independent institutions.

The monastic vocation took three forms in the Byzantine world: the eremitical, or solitary life; the coenobitical, or communal life, patterned after the monastic constitutions established by St. Basil of Caesarea in the fourth century; and the style which attracted growing numbers of adherents during the tenth and eleventh centuries, the lavriote, representing a combination of the first two types, in which reclusive monks lived within a loosely affiliated community, known as a *lavra* (or hermitage), under the supervision of a *higoumenos* (abbot).[41]

[41]On the forms of Byzantine monasticism, see Denise Papachryssanthou, "La vie monastique dans les campagnes byzantines du VIII[e] au XI[e] siècle: Ermitages, groupes, communautés," *Byzantion* 43 (1973): 158-180; Rosemary Morris, "Monasteries and their patrons in the tenth and eleventh centuries," *Byzantinische Forschungen* 10 (1985): 185-231.

The decades following the Triumph of Orthodoxy and the restoration of icons in 843 bore witness to a great resurgence in Byzantine monasticism.[42] There was a rapid increase in the number of monasteries and charitable institutions, of varying kinds and sizes, throughout the tenth and eleventh centuries. With the renewed enthusiasm for monastic life came the need for monasteries to expand their resources and holdings to sustain a growing number of residents. While a strongly spiritual motivation led the laity to found monasteries or donate their properties to monastic institutions, there were also incentives of a more worldly nature. Church or monastic lands were largely immune from the tax burdens or obligations imposed on civil and military properties, as well as from confiscation by the imperial government. Once land had been officially conferred to a religious house, it could not be alienated or revert to the status of lay property.

Monasteries were self-supporting agricultural enterprises, and as competitors for land, labour, and resources in the Byzantine countryside, monastic estates drew the attention of imperial legislators, who took aim at two problems arising from the multiplication and expansion of monastic foundations. The first was the threat to the village communes posed by acquisitive ecclesiastical or monastic houses, whose authorities were numbered among the powerful (**C**, **O**). The second was the excessive donation of property to the monasteries, some of which, in stark contradiction to the founding ideals of poverty and asceticism, accumulated vast estates and great wealth, while others fell into ruin for lack of means and labour to keep their lands productive (**J**).

Romanos Lekapenos's novel of 934 dealing with the effects of the famine (**C**) had reserved a place among the *dynatoi* for members of the ecclesiastical and monastic hierarchies. Like their secular counterparts, these powerful persons were barred from acquiring land in any way in the village communes and were compelled to return any properties they had obtained since the time of the famine. In the case of the monasteries, however, the emperor cast his eye on the gifts of land to monasteries customarily made by persons intending to enter monastic life. If the entrant's donation had been made from genuinely spiritual motives, the emperor ruled that the monastery was entitled to receive payment for the value of the property which it was obliged to return; but if the pre-

[42]Morris, *Monks and Laymen*, pp. 9-24.

text of monastic vows had served as a screen for an illegal transfer of land, the monastery forfeited both the property and all claims to its equivalent value in cash.[43] That such covert practices were thought common enough to warrant these provisions is supported by a number of cases from the tenth century showing monks or monastic foundations resorting to various machinations in order to maintain or assert control over properties at the expense of local villagers.[44]

Some six decades after Romanos's legislation, Basil II intervened to counteract another threat to the village communes, this time posed by bishops attempting to appropriate small communal monasteries (**O**). It frequently came to pass, declared the emperor, that villagers, singly or in groups of two or three, would put up a chapel on their lands and live there as monks until their deaths, whereupon the local bishop would lay claim to the building and property as a diocesan monastery. Basil sought to block such appropriations by citing the technical point that such small houses counted not as monasteries, but as communal oratories or chapels subject to the spiritual, but not the administrative, supervision of the local bishop. What the emperor sought to forestall, however, was not just the church's appropriation of these foundations, but their subsequent transfer to secular *dynatoi* by church officials using an arrangement known as the *charistike* (also *charistikion*). This was a new device whereby the management and financial exploitation of monasteries were (temporarily) entrusted to a lay person. As this arrangement would have given the *dynatoi* entry into the village communes, Basil insisted that upon the death of their founders these small chapels were to be considered communal churches within the jointly owned property of the

[43]Morris has noted that the eighth heading in the index to Romanos's novel of 934 forbids monasteries from accepting donations of land made by lay persons taking monastic vows (the practice known as the *apotagê*). They were, however, allowed to accept the cash value of the land: *Monks and Laymen*, pp. 192-193; cf. Svoronos, *Novelles*, p. 79. These penalties against the monasteries were repeated in Constantine VII's novel of 947 (**D**), but this decree did allow institutions which had not been guilty of coercion to recover the purchase prices and outlay for improvements.

[44]Morris, *Monks and Laymen*, pp. 172-181.

village, and as such are beyond the reach of episcopal authorities and ineligible for transfer through the *charistike*.[45]

The multiplication and expansion of the monasteries also raised concerns about the purpose and spiritual integrity of the monastic vocation. A famous novel of Nikephoros Phokas, issued in 964 (**J**), is devoted exclusively to this question.[46] The emperor begins by censuring the monasteries for their wealth and cupidity which betray the ascetic ideal of the early fathers and Christ's commandments to distribute one's worldly goods to the poor. He then inveighs against the needless establishment of new monasteries and charitable institutions by patrons acting not from motives of piety or beneficence to the poor, but out of vanity and self-aggrandisement. To bring the monastic life back into conformity with its founding principles, the emperor henceforth forbids donations of land for the establishment of new monastic, charitable, or ecclesiastical institutions, and directs would-be benefactors instead to sell their own lands to laymen and to contribute the profits and other resources to the renovation of already existing institutions which had fallen on hard times through lack of resources or mismanagement.

The spiritual tenor of the decree should not obscure the practical concerns behind these rulings. The fleeting references to the decree in the chronicles of John Skylitzes and John Zonaras state that Phokas justified his legislation curbing the expansion of ecclesiastical properties by alleging mismanagement of money and resources on the part of church and monastic authorities; he also complained of their absorption of military lands.[47] In this connection, Phokas's decree goes beyond the spiritual arguments to warn that the monasteries lacked the means and labour to keep their lands productive. Since the law forbade churches and monasteries from selling their lands, donations of property only compounded

[45]Cf. *ODB* 1: 412-413. On Basil's policy towards the monasteries and the controversy surrounding the *charistike*, see John Thomas, "The crisis of Byzantine ecclesiastical foundations, 964-1025," *Byzantinische Forschungen* 9 (1985): 265-274, and idem, *Private Religious Foundations in the Byzantine Empire* (Washington, D.C., 1987), pp. 157-166.

[46]Rosemary Morris, "The two faces of Nikephoros Phokas," *Byzantine and Modern Greek Studies* 12 (1988): 100-106, and idem, *Monks and Laymen*, pp. 166-199.

[47]Skylitzes, p. 274[53-55]; Zonaras 3: 505[1-3]. The alienation of military lands to the imperial monastery of Lakape is mentioned in **H**; note also a letter of the *protasekretis* Symeon (who supervised the preparation of imperial edicts during the reign of Nikephoros Phokas; see below, p. 90, n. 1) reviewing complaints that the metropolitan of Patras had seized lands belonging to *stratiotai*: Darrouzès, *Epistoliers*, pp. 101-102 (letter no. 5).

the problem and resulted in the loss to the state of lands needed for their contribution to civil and military revenues.

Phokas's legislation was the most forthright attempt by the central government to arrest the growth of the monasteries; but his restrictions were never enforced. Even if the short decree attributed to Basil II (N) repealing Phokas's novel is spurious,[48] his legislation seems to have been ignored by his successors. The creation and patronage of monasteries and religious houses by emperors, ecclesiastics, and the laity proceeded throughout the tenth and eleventh centuries, as the crown continued to grant exemptions and privileges to spiritual foundations and to their sponsors. The spiritual worth and necessity of the monastic vocation were too deeply embedded in the Byzantine mind ever to be subject to the restrictions of the sort imposed by Nikephoros Phokas. As one scholar has commented:

> There were certainly attempts on the part of the Byzantine state to direct and control ecclesiastical patronage and to curb the economic and social effects it had, but these must always be considered in the context of a lasting belief in all ranks of society in the value of the life led by those seeking the *angelikon bion* and in the basic benefits to be gained from donation to them and patronage of their endeavours.[49]

4. The "powerful" and the "poor"

The opposition between the "powerful" and the "poor" runs as a leitmotiv through the land legislation. We have seen in the previous sections how the emperors discriminated legally against the persons categorised as "powerful" and sought to defend the village communes and peasant freeholders from their depredations. We will now look more closely at the ways in which these two groups were defined in the novels and comment on the effectiveness of the legislation in controlling the powerful magnates who challenged imperial authority in the Byzantine countryside.

[48]John Thomas, "A disputed novel of Basil II," *Greek, Roman and Byzantine Studies* 24 (1983): 273-283.

[49]Morris, "Monasteries and patrons": 231.

A. The terminology

The term "powerful" is a direct translation of the Greek adjective *dynatos* (*dynatoi* in the plural), the label most commonly employed in the legislation. The persons referred to as the *dynatoi* are defined in two ways in the novels: first, by their methods, as stated by Romanos Lekapenos in his first novel (**B**), "considered to be *dynatoi* are those who, even if not personally but through the influence of others with whom it is common knowledge that they are connected, are capable of intimidating sellers or satisfying them with a promise of some benefaction"; and second, by their position in the civil, military, or ecclesiastical hierarchies, as stated by the same emperor in his novel of 934 (**C**), "the illustrious *magistroi* or *patrikioi* ... persons honoured with offices, governorships, or civil or military dignities ... those enumerated in the Senate ... thematic officials or ex-officials ... metropolitans, archbishops, bishops, *higoumenoi*, ecclesiastical officials or supervisors or heads of pious or imperial houses." Taken together, the two definitions portray the powerful as the high and mighty capable of using their influence, rank, or wealth to impose their will on others and obtain the ends they desired. The superior wealth and resources which the powerful commanded were assumed within these definitions.

In a fiscal sense, the novels represent powerful "persons" (*prosopa*) as either land-owning individuals or institutions (such as monasteries) whose holdings were extensive enough to constitute a single, separate tax unit, as did the village commune. But where the peasant smallholders in the village communes were subject to various secondary taxes and corvées (unpaid labour) in addition to the basic land tax (called the *demosion*), powerful persons or institutions, though liable to the *demosion*, were largely untouched by or exempt from secondary taxes and services. Since the taxes they rendered were relatively low in proportion to their landed wealth, it is clear that one of the advantages accruing to the powerful was a lighter tax burden than that borne by the "poor."[50]

The terminology and definition of the powerful did not originate with the tenth-century legislation, nor were such abuses of office or forced patronage on the part of imperial officials or local magnates new to this

[50]Oikonomides, *Fiscalité et exemption*, pp. 153-186; idem, "Social structure": 106-108.

period.[51] Denunciations of similarly coercive practices on the part of civil officials, along with the measures taken against them, can be found in Justinian's laws and are echoed in the tenth-century novels.[52] What does distinguish the Macedonian legislators from their predecessors, however, are their attempts to achieve a more comprehensive legal definition of "powerful" persons and the specific application against them of the pre-emption and prescription rules.

The definition of the "poor" is less precisely established in the legislation. It is significant that Romanos Lekapenos's decree of 928 (**B**), the first to take action against the *dynatoi*, refers to the peasant inhabitants of the village communes in fiscal terms only, employing technical vocabulary (*synchoritai*, *syntelestai*) which emphasises their common residence and joint tax obligations. Not until after the famine does "poor" appear in the legislation in reference to the peasant landholders.

Although the word "poor" is not a direct antonym of "powerful", the Greek words used in the legislation convey the meaning of "weakness" as well as of poverty. The terms used by Lekapenos in his novel of 934 (**C**), *ptochoi* and *penetes*, were deliberately chosen for their Scriptural overtones so as to dramatise the misery and defencelessness of the peasants in the wake of the famine. The emperor works the theme of the poor and downtrodden oppressed by the wicked, elaborated throughout Psalms 9-14, into the preamble of his novel, and to justify his enactment portrays himself in the Old Testament image of the sovereign as the defender of his people and the scourge of their oppressors, here equated with the *dynatoi* who have exploited the wretched victims of the famine.[53] By implication, anyone not enumerated in the emperor's table of civil, military, or ecclesiastical *dynatoi* counted among the "poor" whom the legislation was issued to protect.

Subsequent novels retained the categories and vocabulary of the powerful and the poor as articulated by Romanos Lekapenos; but the legislators, it must be remembered, applied these terms not in a social but in

[51]Saradi, "*Archontike dynasteia*": 69-89; see also Michael Hendy, *Studies in the Byzantine Monetary Economy, 300-1450* (Cambridge, 1985), pp. 103-104, 178-179.

[52]Cf. Romanos Lekapenos's novel of 934 (**C**).

[53]Cf. *ODB* 1: 667-668 (*dynatoi*); *ODB* 3: 1697-1698 (poor); see also Morris, "Powerful and the poor": 17-22, who discusses the terminology and its precedents, and Kaplan, *Hommes et la terre*, pp. 359-371.

a legal and fiscal sense to assist judges and tax officials in deciding whether or not the parties to a land transaction had acted properly and in good faith, and hence whether or not the transaction should be overturned. A later emperor, however, was prepared to admit that the line between powerful and poor was not necessarily as sharp as Lekapenos had drawn it. In his novel of 947 (**D**), Constantine VII conceded that the lowest echelons of the *dynatoi* were not so far above the persons classified as poor that they deserved no repayment or compensation when returning properties legally obtained. He even stated in the same novel that fair transactions between roughly equal members of the commune should be allowed to stand. In short, the distinction between powerful and poor was too schematic to be rigidly applicable in every instance. In a society where one man's patron was another man's client, the task of determining a person's legal status as powerful or poor will ultimately have depended very much on the circumstances of each case.[54]

B. The *dynatoi* and the law

The emergence of a landed aristocracy transformed Byzantine society during the tenth and eleventh centuries. Within this aristocracy, identifiable from the increasing use of family names during this period, three groups have been distinguished: an innermost circle, comprising courtiers and members of the imperial entourage; an outer circle, made up of high military and civil officials; and an outermost circle, consisting of military magnates based in the provinces. Although the imperial legislation was issued in part to combat abuse of office by courtiers and members of the civil and military hierarchy, it was primarily with the provincial magnates that the emperors were concerned.[55]

The provincial aristocracy was predominantly military in character and origin, having grown out of the militarisation of the Byzantine em-

[54]In **D**, Constantine declared that persons with assets of less than fifty *nomismata* were not obliged to reimburse buyers for recovered property. On this figure and the subjectivity of the terms "powerful" and "poor", see Saradi, "*Archontike dynasteia*": 91-99.

[55]On the rise of the aristocracy and its defining characteristics, see the essays in *The Byzantine Aristocracy*, ed. Michael Angold (Oxford, 1984); Jean-Claude Cheynet, "Fortune et puissance de l'aristocratie (X^{e}-XII^{e} siècles)," in *Hommes et richesses dans l'Empire byzantin*, 2: 199-213; and Nicolas Oikonomides, "Title and income at the Byzantine court," in *Byzantine Court Culture from 829 to 1204*, ed. Henry Maguire (Washington, D.C., 1997), pp. 199-215.

pire from the seventh to the ninth centuries.[56] By the tenth century, regional military administration was largely in the hands of magnate families, whose rank and reputation afforded them local prestige and influence, and whose wealth and personal power, backed up by their private military contingents, enabled them to increase their landholdings and to extend their networks of patronage and alliances. The magnates also benefited from the connivance of imperial officials who were not above applying the laws in a way favouring the interests of the powerful.[57]

The hold of the military aristocracy over the provincial administration limited the options available to the emperors in dealing with the powerful.[58] The law was their only resort. In gauging the effectiveness of the law, we must remember that the initial aim of the land legislation was to preserve the imperial fiscal system. The legislators introduced various measures to protect the village communes and their inhabitants, but they did not take a hard line against the *dynatoi* themselves. At no time did the imperial legislators suspend the tax exemptions and privileges enjoyed by the powerful,[59] nor did they promote anything resembling a social policy to narrow the gap between the powerful and the poor. As the legislation progressed, however, its aims widened as the emperors worked in two ways to curtail the spread of the *dynatoi*.

The first was to halt the oppression of the poor through abuse of office or forced patronage, against which the legislation appears to have achieved only limited results. As Saradi has shown, the Macedonian legislation of the tenth century forms but one chapter in the long history of patronage and coercion in Byzantine society, which the law was ultimately powerless to stop.[60] The second was to defend the imperial dynasty against the magnates who began to train their sights on the throne itself. The legal and historical sources show how seriously the Macedonian emperors took the threat posed to their authority by the magnates

[56]The changes in the rural world which gave rise to this military aristocracy are discussed by Haldon, *Byzantium*, pp. 125-172.

[57]The corruption of judges and officials is denounced by Constantine VII in **D** and especially by Basil II in **O**; see Helen Saradi, "The Byzantine Tribunals: Problems in the application of justice and state policy (9th-12th c.)," *Revue des études byzantines* 53 (1995): 174-183.

[58]Hendy, *Studies*, p. 107.

[59]Oikonomides, "Social structure": 107.

[60]Saradi, "*Archontike dynasteia.*"

and how well grounded their concerns proved to be when this threat came to life in the two great rebellions of the 980's, the first led by Bardas Skleros, the second by Bardas Phokas, which nearly toppled Basil II from his throne.

Yet, potent as they were, the strength of the tenth-century *dynatoi* should not be overestimated, nor should the longstanding scholarly verdict that the imperial government eventually "lost" the struggle against the provincial aristocrats during the eleventh century be too readily accepted.[61] Recent scholarship has advanced important revisions to the place and role of the *dynatoi* during this time, and has demonstrated that imperial policy was much more effective at meeting the challenge of the magnates than has previously been recognised. It must not be forgotten that the Byzantine empire, despite the rebellious tendencies of regional military magnates with extensive landholdings and private armies, remained to the end a centralised monarchical state governed from Constantinople.

Studies of the origins and distribution of the magnates have shown that the majority of the great military aristocratic families came from the central Anatolian plateau, mainly from the regions commensurate with the themes of the Anatolikon, Cappadocia, and Paphlagonia. These territories, which for two centuries had formed the empire's defensive frontier against the invasions and raids from the Muslim powers to the east, shared a similar topography of hills and plains supporting a pastoral way of life in which wealth was created through the accumulation of land and livestock.[62] These areas were also characterised by low population density and few towns or cities, factors which allowed powerful persons to acquire extensive estates without close official scrutiny or concerted opposition. On the other hand, very few magnates have been traced from the coastal plains and their immediate hinterlands where a more settled agricultural population and higher concentration of cities proved more resistant to the intrusions of the powerful. Not only does the imperial government appear to have been successful in its efforts to

[61]Hendy, *Studies*, pp. 100-107, and especially Howard-Johnston, "Crown lands," offer very important correctives to the traditional interpretation developed by Ostrogorsky, *History*, pp. 320-350.

[62]Constantine VII's decree of 947 (**D**) identifies the Thrakesion and Anatolikon themes as areas where the *dynatoi* were well entrenched. On the distribution of magnate families, see Howard-Johnston, "Crown lands": 79-82; and Cheynet, *Pouvoir et contestations*, pp. 213-220, with maps on pp. 246-247.

arrest the spread of the magnates into the coastal areas, it also seems to have been effective in denying them access to the newly conquered lands in Cilicia and northern Syria where the prompt establishment of crown estates and domains, coupled with the creation of a new bureaucracy of imperial officials and supervisors, proved to be an effective barrier against magnate encroachment.[63] The vigilance of the imperial government in these regions is apparent in Nikephoros Phokas's decree concerning the Armenian settlers in the frontier districts (**H**), where the emperor cancels all transfers of land to the *dynatoi*, no matter the legality of the transaction.

The land legislation, once thought to have failed in its aim to thwart the ambitions of the powerful, should be seen instead as one of the more effective instruments which the imperial government used to confine the great military magnates to the areas of the central Anatolian plateau where they were most strongly entrenched. Together with the other means at their disposal — such as the selective dispensation of imperial patronage and promotion to win the allegiance of individual magnates, or the confiscation of property and reduction in status to break the overmighty[64] — the emperors used the legislation to assert imperial authority and interests in the regions where the military magnates were neither as numerous nor as dominant as on the central plateau. The success of imperial policy, not at eliminating but at containing the challenge of the magnates, must in the light of recent studies be acknowledged. For in sum, the ability of the Macedonian emperors to recognise the danger the *dynatoi* represented and to formulate an effective response to them does much to explain the longevity and lasting prestige of the dynasty.

III. THE TRANSLATIONS

1. Editions and supplementary works

Apart from the first decree in the series, this translation of the novels is based on the edition in preparation by Nikos Svoronos at the time of his death in 1989 and published posthumously by Paris Gounaridis in 1994.

[63]Howard-Johnston, "Crown lands": 85-100.

[64]Howard-Johnston, "Crown lands": 82-85; Basil II's decree of 996 (**O**) gives the best known examples of the emperor's selective use of confiscation and reduction.

Readers should be aware that this publication has met with criticism, aimed mainly at the errors in the establishment of the manuscript tradition and the problems left unresolved in the unfinished work.[65] Nevertheless, as it does not seem likely that the wording of the Greek texts will change appreciably in subsequent editions, I have elected, with the exception of **A**, to follow Svoronos's text which, despite its imperfections, supersedes the edition of the novels reprinted in the first volume of Zepos's *Jus graecoromanum*. I have cited the edition of each decree in Svoronos's publication, as well as the texts of the novels reprinted in the *Jus graecoromanum* and those published in separate editions. The division of the texts into sections and subsections corresponds with the presentation of the Greek texts in Svoronos's edition.

The translations have been kept as close to the texts as possible, although at times it has been necessary to expand on the text (replacing pronouns with nouns, for example) for the sake of clarity. Since many of the technical terms used in the novels have no English equivalent, they have been transliterated and explained in the accompanying notes or in the Glossary. To these brief explanations I have supplied references to the *Oxford Dictionary of Byzantium*, a work which readers unfamiliar with Byzantine studies will find very useful for its definitions and bibliographical aids.

Each decree is preceded by an introduction reviewing the evidence for the date and attribution of the text, and summarising its purpose and contents. Although it is beyond the scope of this work to solve all the outstanding questions concerning the provenance of the novels, I have in certain cases attempted to establish a more precise date and context. In one instance (a novel attributed to Romanos II = **G**), I have rejected the previously accepted date and attribution and argued for its reascription to Constantine VII. For further background I have referred readers to the discussions of each novel in the agrarian studies of Paul Lemerle and Michel Kaplan, while the notes accompanying the translations will direct those interested to the relevant secondary literature concerning particular topics. Excerpts from historical, legal, and administrative sources which supplement or clarify the decrees are presented in the

[65]Ludwig Burgmann, "Editio per testamentum," *Rechtshistorisches Journal* 13 (1994): 455-479.

introductions or notes to each text;[66] the translations are mine unless otherwise indicated.

2. Note on Byzantine chronology

The rubrics and texts of several decrees cite the so-called world year and indiction year in which they were issued. By way of explanation, the Byzantines counted time from the Creation of the world which, according to their calculations, had occurred 5,508 years before the birth of Christ. Converting a Byzantine date is simply a matter of subtracting 5,508 from the world year cited; for example, the year 6504 given in Basil II's great novel (**O**) is equivalent to our year 996.[67] In addition to the world year, Byzantine documents also record an indiction year; the indiction itself was a cycle of fifteen years, in which each year represented the official assessment and administrative year.[68] It should also be noted that the Byzantine year began on 1 September and ended on 31 August.

[66]See note 1 above for a list of the most important primary sources.
[67]On the Byzantine system of calculating time, see *ODB* 1: 448-449.
[68]*ODB* 2: 993.

Emperors of the Macedonian Dynasty

Emperor	Regnal dates	Decrees
Basil I	867-886	
Leo VI	886-912	**A**
Alexander	912-913	
Constantine VII (regency)*	913-920	
Romanos I Lekapenos	920-944	**B, C**
Constantine VII (sole rule)	945-959	**D, E, G**
Romanos II	959-963	**F**
Nikephoros II Phokas	963-969	**H, J, K, L, M**
John I Tzimiskes	969-976	
Basil II	976-1025	**N, O**
Constantine VIII**	1025-1028	

* Constantine VII was a child of six at the death of his father Leo VI in 912. Following the death of Leo's brother and successor Alexander in 913, a regency governed the Byzantine empire until 920, when Romanos Lekapenos (whose daughter had been given in marriage to Constantine) was named co-emperor. Lekapenos crowned three of his sons co-emperors and kept Constantine in the background during his reign. Lekapenos was deposed by his sons Stephen and Constantine in 944; shortly afterwards they were arrested and exiled by Constantine VII, who reclaimed the throne and ruled as sole emperor from 945 until his death in 959.

** The male issue of the Macedonian line expired with Constantine VIII, who left two daughters, Zoe and Theodora. Zoe's husbands included the emperors Romanos III Argyros (1028-1034) and Michael IV (1034-1041); the two sisters ruled jointly for a brief time in 1042, whereupon Zoe married Constantine Monomachos, who outlived Zoe and reigned until his death in 1055. Theodora then ruled as sole empress for a few months and died the next year. With her passing the Macedonian line came to an end.

A

LEO VI PERMITS THE UNRESTRICTED ALIENATION OF PROPERTY

The compressed and disjointed wording of this text, coupled with its preservation in late manuscripts unassociated with the novels of Leo VI, have raised doubts concerning its authenticity. Svoronos regarded the text as an epitome of a genuine novel issued by Leo between 894 and 912, and it has been taken by scholars as the first decree of the land legislation. While questions remain as to the provenance of this decree, they are not tantamount to proof of its being a later fabrication.[1]

Schminck's edition, on which the translation is based, improves upon previous editions in establishing the tradition and reading of the text; but the differences between his edition and the now superseded versions of Zepos and Svoronos do not alter the standard interpretation of the decree. It rules that the owner of a property is free to sell to whomever he wishes provided that the buyer is ready to assume the attendant tax obligations. This ruling, as Lemerle rightly observed, does not suspend the right of first refusal, but seeks to eliminate abuse of this privilege. The decree envisions the plight of an impoverished peasant unable to sell his land owing to the bad faith of his neighbours,[2] who repeatedly invoke their right of pre-emption to block all sales until in desperation the owner is forced to abandon the property, leaving the neighbours to acquire it for nothing. The emperor therefore restricts the neighbours' consent as a prerequisite to the sale, permitting the owner to sell to any buyer (even to one from outside the village commune) without giving notifi-

[1]Andreas Schmink, "'Novellae extravagantes' Leons VI," *Subseciva Groningana* 4 (1990): 198-201, has dismissed this decree as a forgery concocted during the eleventh century to supply a precedent justifying the legislation against the *dynatoi*. Although he rightly points out the problems of authenticity posed by this text, it is difficult to see why anyone would have gone to the trouble of forging such an edict when an authentic law permitting unrestricted alienation of property (the "old law" cited by Romanos Lekapenos in the prologue of **B**: cf. p. 40, n. 6 below) already lay to hand.

[2]To be noted here is Lemerle's observation that the term "neighbours" covers all persons with the right of first refusal enumerated in Romanos Lekapenos's novel on pre-emption (**B**, section 1.1-3).

cation, while allowing the neighbours the right (now *a posteriori* instead of *a priori*) to match the purchase price within six months of the sale.

TEXT Schminck, "'Novellae extravagantes'": 195-201; Svoronos, *Novelles*, pp. 41-46 (document no. 1); Zepos, *JGR* I: 186-187.

LIT. Lemerle, *Agrarian History*, pp. 90-91; Kaplan, *Hommes et la terre*, pp. 410-414.

NOVEL OF THE MOST PIOUS LORD EMPEROR LEO

The holder of a property is permitted to sell to any person he wishes without interference and without giving notification. For our Majesty allows the person assuming the fiscal obligations to purchase any property subject to the fisc without opposition to the sale from the neighbours. For if a poor, impoverished person without abundant means wishes to sell his own property while the neighbours secretly wait from one day to the next for the impoverished peasant to abandon the property, and the neighbour takes it for nothing, this our Majesty considers completely unfair.

Wherefore it is authorised for all indigent and impoverished persons to sell properties which are impossible for them to keep, once their value has been assessed, and the person who purchased fairly is to keep what he bought. The neighbours may submit a claim within the first six months of the first year and so acquire this property upon the return of the price to the purchaser. When this period has expired, the neighbours are therefore excluded, with possession of the property confirmed to the purchaser.

Copper follis of Leo VI

B

ROMANOS LEKAPENOS REVIVES THE LAW OF PRE-EMPTION

This novel of Romanos Lekapenos on the right of pre-emption has come down in three forms. The first is a text consisting of two sections (Version 1); the second is a longer text made up of three sections (Version 2); the third is an epitome of Version 1. The texts of both Versions 1 and 2 are translated here.

Svoronos's examination of the tradition led him to decide that Version 1 represented the original and authentic text of the novel, but the integrity of this text remains open to question. The novel gives the impression of a composite text, and it was with good reason that Ostrogorsky regarded the second section as a further stage in the legislation.[1] Rather than accept the whole of Version 1 as the authentic novel, it may be more prudent to take its first section as the original legislation, and the second section as a supplement attached shortly afterwards.

Svoronos assigned the final composition of Version 2 to the late eleventh century, and defined this text as a reworked version of the novel incorporating insertions and additions dating from the tenth century.[2] The differences between this text and Version 1 will be evident in the parallel presentation of the two texts.

The attribution of the novel to Romanos Lekapenos is not in dispute.[3] The year of its issue, however, is contested. The once general acceptance of the date recorded in the rubrics as April, in the tenth indiction, of the year 6430 (922) has been challenged by scholars, led by Svoro-

[1]To support his view of a composite text, Ostrogorsky, *History*, p. 273, note 1, cites the discrepancy between the gratuitous transactions listed in the first section of the decree and those forbidden the *dynatoi* in its second section (corresponding to sections I.8 and II.1 in Svoronos's Version 1, supposedly the original decree); see also p. 45, n. 15 below.

[2]Listed by Svoronos, *Novelles*, pp. 49-53.

[3]One tradition names Kosmas the *magistros* as the author of the text, a plausible but unprovable ascription (see p. 49, n. 1 below). On the attribution to Kosmas of Romanos Lekapenos's novels **B** and **C**, as well as his three legal decisions, see Svoronos, *Novelles*, pp. 61, 242-247.

nos, who have argued for a revised dating to April of 928,[4] but the evidence for either view remains inconclusive. All that seems certain is the original novel's promulgation before the results of the severe winter and famine of 927-928 were recognised, as the text nowhere alludes to their ruinous effects and has none of the urgency and strident tone which characterise Lekapenos's novel of 934 (C) issued in response to the crisis.

The legislator declares in the prologue his intention to resolve a longstanding contradiction between an old decree restricting sales of land to members of the same tax district, and another allowing persons to alienate property freely without interference from relatives and associates. He then proceeds in the first section to codify the right of pre-emption (*protimesis*), or the right of first refusal, in alienations of property by inhabitants of village communes forming or belonging to a single tax district.

Anyone wishing to alienate property for valuable consideration (by sale, long-term lease, or rent) must first give notice to the following persons, ranked in this sequence: 1) relatives of the vendor with lands intermingled among his holdings; 2) associates of the vendor with lands intermingled among his holdings; 3) other owners of lands intermingled among the vendor's holdings; 4) members of the same tax district with land adjoining the vendor's holdings; 5) any person with lands adjoining the vendor's holdings.[5] If any of these persons choose to exercise their right of first refusal, they have a period of thirty days, extended to four months in certain cases, to come to terms with the alienator.

These measures were intended to protect the social and fiscal coherence of the village commune by permitting sales of land to outsiders only after members of the commune had declined to purchase, on the reasoning that if a peasant were compelled to offer his property first to relatives, associates, or neighbours, his lands would likely go to those best able to incorporate and exploit them, and hence meet the attendant

[4]Kaplan reviews the evidence for the novel's date and argues for its promulgation in April of 928, just before the effects of the famine became manifest: *Hommes et la terre*, pp. 415-416.

[5]Eleftheria Papagianni examines the relative weight given to kinship, co-ownership, and neighbourhood in legal decisions concerning the right of pre-emption; cf. "Vorkaufsrecht und Verwandtschaft," in *Eherecht und Familiengut in Antike und Mittelalter*, ed. Dieter Simon (Munich, 1992), pp. 147-160. On the application of the pre-emption rule in Byzantine law, and the means used to circumvent it, see Ostrogorsky, "Pre-emption right," and Saradi, "*Archontike dynasteia*": 100-106.

tax obligations. The right of pre-emption does not extend to gratuitous alienations of property (dowries, prenuptial gifts, inheritances, exchanges), presumably because the legislator is satisfied that such arrangements are by nature local and familiar, involving the alienator's relatives or neighbours; but these transactions are subject to examination, with penalties applying to persons who use them as a screen for alienations falling under the pre-emption rule.

With these measures the legislator resolves the contradiction stated in the prologue by staking a position between the two old laws. The alienation of property to any person, including outsiders, is still permissible, but the alienator's right to dispose of his property is restricted by rules and procedures favouring his relatives, associates, and neighbours.

The second section gives the impression of a supplement added to close loopholes left open in the initial legislation. The rule permitting the gratuitous alienation of property to anyone at all has apparently played into the hands of the *dynatoi*, labelled and defined here for the first time in the land legislation. The legislator's description of the *dynatoi* as persons capable of bending others to their will indicates that wealthy and influential outsiders have taken advantage of the rule to entice or extort gifts and bequests of land in village communes. It would also appear that they have resorted to similar tactics to purchase lands. To neutralise these machinations of the *dynatoi*, the legislator bars them from receiving gifts or bequests of land from persons not related to them, and from acquiring land in village communes where they do not hold property.

TEXT Svoronos, *Novelles*, pp. 47-71 (document no. 2); Zepos, *JGR* I: 198-204.

LIT. Lemerle, *Agrarian History*, pp. 90-94; Kaplan, *Hommes et la terre*, pp. 414-421.

Version 1

NOVEL OF THE LORD EMPEROR ROMANOS THE ELDER CONCERNING THE RIGHT OF PRE-EMPTION, PRONOUNCED IN THE MONTH OF APRIL IN THE TENTH INDICTION IN THE YEAR 6430

PROLOGUE An old law has it that no one is to be prevented by relatives or associates from selling to whomever he wishes, allowing both relatives and associates to sell their own properties, both partially and without division, to whomever they wish without interference.[6] Another law, however, directly prohibits this: no one is allowed to sell to anyone else, save only the inhabitants of his own fiscal district.[7]

1.1. Having devoted great care to our subjects and to the public revenues, as well as to the rest of the military and civil administration, rectifying their contradiction and imprecision through this our imperial ordinance in a clear and concise pronouncement,[8] we decree that from now on in every town, region, and province, persons who perhaps through an inheritance, partially or undividedly, or by joint purchase or other ownership or acquisition of this sort, or those who by kinship and others by acquisition, are in joint possession of a dwelling, field, vineyard, or immovable property of any sort whatsoever, or those not in joint ownership whose lands are intermingled in some part among the neighbouring properties, or adjacent members of the same fiscal unit, if they wish to alienate their own properties by sale, long-term lease, or rent, they must not alienate these properties to anyone else before they have given notice to those whom we name in order of their right of pre-emption.

[6]The edict issued by Theodosius in 391 (*Codex Theodosianus* III.1.6): "Formerly the right had been granted to near kinsmen and to co-owners to exclude extraneous persons from a purchase [of land], and men could not, in accordance with their own decision, sell any property which they had for sale. But because this appears to be a grave injustice, which is veiled by the empty pretext of honour, that men should be compelled to do anything about their own property against their will, this former law is hereby annulled, and each person shall be able to sell and approve a purchaser according to his own decision" (tr. Pharr, *Theodosian Code*, p. 64).

[7]The edict issued by the emperors Leo and Anthemius in 468 and preserved in the *Corpus juris civilis*, XI.55: "Through motives of humanity, we deem it necessary for the following provision to be added to those previously enacted with reference to what are called 'mother-villages,' to prevent the owner of land from transferring the same to a stranger, under any circumstances. Hence, if anyone should desire to alienate land which belongs to him, he shall not be permitted, under the terms of any contract whatsoever, to convey the ownership and possession of said land to anyone except a registered inhab-

Version 2

NOVEL OF THE LORD EMPEROR ROMANOS THE ELDER. CONCERNING THE ALIENATION OF PROPERTIES AND THE RIGHT OF PRE-EMPTION OF RELATIVES, ASSOCIATES, INTERMINGLED AND ADJACENT MEMBERS OF THE SAME TAX UNIT, AND PERSONS WITH ADJOINING PROPERTIES; AND PERSONS CONSIDERED MEMBERS OF THE SAME FISCAL UNIT, WHETHER VILLAGES OR HAMLETS; THE RESTRICTION OF POWERFUL PERSONS; AND THE ALIENATION OF MILITARY PROPERTIES.

PROLOGUE There is an old law that no one is be prevented by relatives or associates from selling to whomever he should desire. Another law, however, directly prohibits this: no one is allowed to sell to anyone else, save only the inhabitants of his own fiscal district.[7]

1.1. Having devoted great care to our subjects and to the public revenues, as well as to the rest of the military and civil administration and taxes, rectifying their contradiction and imprecision through this our imperial ordinance in a clear and concise pronouncement,[8] we decree that from now on in every town, region and province, persons who perhaps through an inheritance, partially or undividedly, or by joint purchase or other acquisition of this sort, or those who by kinship and others by acquisition, are in joint possession of a dwelling, field, vineyard, or immovable property of any sort whatsoever, or those not in joint ownership whose lands are intermingled in some part among the neighbouring properties, adjacent members of the same fiscal unit, or simply neighbours,[9] if they wish to alienate their own properties by sale, long-term lease, or rent, they must not alienate these properties to anyone else before they have given notice to those whom we name in order of their right of pre-emption.

---

itant of the same village, and all strangers are hereby notified that if they attempt to conclude, or obtain possession of property by means of a transaction of this kind, in violation of what is forbidden by law, every such agreement entered into will be of no force or effect, and if it has been completed, and the property delivered, the latter shall merely be returned" (tr. Scott, *The Civil Law*, 15: 214).

[8]Standard themes of the emperor's supervision and regulation of affairs: cf. Hunger, *Prooimion*, pp. 84-94, 103-109.

[9]πλησιάζοντες: an insertion added to cover all possible members of the village commune subject to the pre-emption rule.

2. First to be named are the relatives with lands intermingled, then the associates[10] conjoined in the same way, after whom come persons with lands intermingled only, even if they happen to be complete strangers to the alienator. Next are the members of the same fiscal unit with lands adjoining, and then persons with lands merely connected in some portion.

3. By members of the same fiscal unit we mean all those registered to the same tax district even if they pay their taxes in different places.

4. If there are many persons adjacent to the property being sold, or many neighbours bordering the property being alienated, let the notification of the right of pre-emption be sent to all in the same order, so that in the event that those given preference decline, those called next in sequence may come to terms if they wish. If all come forward with equal privileges, with the result that they can in no way be rated ahead of one another in this summons, this declaration is to be made to all alike, that they must deposit the fair price (in other words, what another person would offer in good faith) promptly within thirty days and take a share of the property in due proportion by their own arrangement or through an authority.

5. Persons who do not furnish the amount incumbent upon them within the stated time will no longer have the right of pre-emption, unless one of them is a prisoner of war, has been in confinement or in exile,[11] is absent legitimately on public or personal affairs, or has yet to complete his twenty-fifth year of age.[12] Of these persons, let those who have resumed management of their possessions within a period of four months come in with the new buyers who have made acquisitions alongside them, in due proportion, restoring to the [said buyers] the requisite price along with the legal interest and necessary costs. Let them dislodge outside purchasers completely, returning the price to them with the interest and the expenses likely to have been generated.

[10]*κοινωνοί*: members of a *koinonia*, the Greek term for the Latin *societas*, "association," "partnership," or "participation": it is defined as follows by Nicholas, *Roman Law*, pp. 185-186: "... any agreement for joint activity, great or small, brief or prolonged. ... It would include, for example, an agreement ... to buy land to preserve it as an open space. In this last case, and in many others, the partners would be joint owners, but joint owners are not necessarily partners: they may well, as in the case of joint heirs, have no common purpose."

2. Let the relatives with lands intermingled be named first, then associates[10] conjoined in the same way, after whom come persons with lands intermingled only, even if they happen to be complete strangers to the alienator. Next are the members of the same fiscal unit with lands adjoining, and then persons with lands merely connected in some portion.

3. By members of the same fiscal unit we mean all those registered to the same tax district even if they pay their taxes in different places.

4. If there are many neighbours bordering the land being alienated, the right of pre-emption must be granted by notification to each one in the same order, so that in the event that those given preference decline, those called next in sequence may come to terms if they wish. If all come forward with equal privileges, with the result that they can in no way be rated ahead of one another in this summons, let this declaration be made to all alike, that those who promptly within thirty days deposit the fair price, or what an honest buyer would offer in good faith, will take a share of this property in due proportion by their own arrangement or through an authority.

5. Persons who do not furnish the amount incumbent upon them within the stated time will no longer have the right of pre-emption, unless one of them is a prisoner of war, has been in confinement or in exile,[11] is absent legitimately on public or personal affairs, or has yet to complete his twenty-fifth year of age.[12] Of these persons, those who have resumed management of their possessions within four months [may] come in with the neighbouring new buyers in due proportion, restoring to the latter the corresponding price along with the legal interest and necessary costs. They [may] dislodge outside purchasers completely, returning the price to them with both their interest and expenses.

[11]Confinement (περιορισμός = *relegatio*) was a punishment imposed on persons guilty of economic or financial transgressions but did not entail loss of property. Banishment or exile (ἐξορία = *deportatio*) was a more severe penalty carrying the condemned person's loss of civil rights and confiscation of his goods: cf. Spyros Troianos, "Die Strafen im byzantinischen Recht. Eine Übersicht," *Jahrbuch der Österreichischen Byzantinistik* 42 (1992): 68-70.

[12]Twenty-five was the age of majority in Roman and Byzantine law: see Monier, *Manuel élémentaire*, 1: 333-336.

6. If the guardians of the aforementioned minors suspect that the minors will not consider the transaction they have concluded acceptable, let the guardians either reject or accept the agreement in a written legal decision. If the guardians are negligent in doing this, they must at their own expense furnish the minors with all the profit and all the gains which the latter would have had, if the guardians had been prompt to conclude the agreement. These are the provisions concerning relatives, associates, and adjacent members of the same tax community.

7. But within the commune of designated villages and hamlets let this [rule] prevail *a fortiori*: the inhabitants of these will retain the right of pre-emption amongst themselves. If all to whom right of pre-emption is granted decline, or are shown to be responsible for financial loss, a plot to do physical harm, or a cruel indignity to the alienator or his household, not by accident but with premeditation, whether they were responsible personally or through those related to them, it is our wish that these individuals in no way be brought into the injured party's property against his will.

8. All persons may alienate to both members of the village commune and outsiders by reason of a dowry, prenuptial gift, testamentary disposition, exchange, or settlement,[13] on the condition that no one who has for some reason secretly sold or rented to persons without the privilege of pre-emption may publicly pretend that he has made a gift, legacy, or one of the aforementioned transactions. It is for this reason that persons with the right of pre-emption may exact an oath from both the seller and the recipient. If the alienators have the audacity to do something contrary to the provision of our legislation while openly pretending to do otherwise, should they be proven guilty after taking the oath, both they and the parties who entered into a deceitful deal with them will pay the penalty for perjury; the buyers will be deprived of the property,

[13]A settlement (διάλυσις) could include the acquittal of a debt.

6. If the guardians of the aforementioned minors suspect that the minors will not consider the transaction they have concluded acceptable, let the guardians either reject or accept the agreement in a written legal decision. If they are negligent in doing this, they must at their own expense furnish the minors with all the profit and all the gains which the latter would have had, if the guardians had been prompt to conclude the agreement. This [provision] shall apply to relatives, associates, members of the same tax district, and those otherwise in possession of adjacent property.

7. But within the commune of designated villages and hamlets let this [rule] prevail *a fortiori*: the inhabitants[14] of these will retain the right of pre-emption amongst themselves. If all to whom right of pre-emption is granted decline, or are shown to be responsible for financial loss, a plot to do physical harm, or a cruel indignity to the alienator or his household, not by accident but with premeditation, whether they were personally responsible or through those related to them, it is our wish that these individuals in no way be brought into the injured party's property against his will.

8. All persons are able to alienate to members of the village commune or to outsiders[15] by reason of a dowry, a prenuptial gift, a gift, whether ordinary or *mortis causa*, or by testamentary disposition, exchange, or a settlement,[16] on the condition that no one who has for some reason secretly sold or rented to persons without the privilege of pre-emption may publicly pretend that he has made a gift, legacy, or one of the aforementioned transactions. It is for this reason that those with the right of pre-emption may exact an oath from both the vendor and the recipient. If the alienators have the audacity to do something contrary to the provision of our legislation while openly pretending to do otherwise, should they be proven guilty after taking the oath, both they and the parties who entered into a deceitful deal with them will pay the penalty for perjury; the buyers will be deprived of the property,

[14]Reading *οἱ οἰκήτορες* for *οἱ κτήτορες*; I make the same emendation in section II.1A.

[15]Reading *οἰκείοις καὶ ἐξωτικοῖς ἅπαντες* for *οἰκεῖοι καὶ ἐξωτικοὶ ἅπαντες*.

[16]The redactor of Version 2 supplies a list of gratuitous transactions here which closely corresponds with the list of transactions forbidden the *dynatoi* in section II.1 below. This is an improvement on the text of Version 1, in which the transactions listed in section I.8 do not correspond precisely to those listed in section II.1 (where gifts and other means of acquisition not included in section I.8 are banned).

the sellers of the price received in secret, and both items will be conveyed to the public treasury so that they may be transferred from the public treasury to the neighbours. If [buyers and sellers] are caught in some such intrigue before taking the oath, the transaction will be invalid, and the vendor who once attempted to alienate the property illegally will be compelled even against his will to sell to those persons to whom we have granted right of pre-emption.

11.1. We forbid the *dynatoi* henceforth to acquire any land, whether by way of adoption or gift, ordinary or *mortis causa*,[17] by testamentary disposition, by use alone, or by some form of protection or support, from the less well to do unless they are their relatives. Nor are they to arrange new purchases, rents, or exchanges with the owners in any villages and hamlets where they do not have their own properties.

2. Considered to be *dynatoi* are those who, even if not personally but through the influence of others with whom it is common knowledge that they are connected,[18] are capable of intimidating sellers or satisfying them with a promise of some benefaction. Should one of the *dynatoi* attempt this sort of intrigue, he will be deprived of the property and be compelled by the treasury to pay the full price for it.

[17]*θανάτου αἰτίᾳ δωρεᾶς* (Lat. *donatio mortis causa*): Nicholas, *Roman Law*, pp. 266-267, offers this definition: "a gift made in contemplation of death in some particular eventuality (e.g. a dangerous journey which the donor was about to undertake), and only becoming fully effective if the donee survived the donor. ... Like an ordinary gift (*donatio inter vivos*), it could be any voluntary enrichment of the donee by the donor, whether by the transfer of property, or the creation of a contractual right, or the extinction of a debt. In the later law there was no need for any immediate prospect of death, the gift being said to be made in contemplation of mortality rather than death, and a man could in this way in effect make gifts out of his inheritance without the need of making a will or of satisfying any of the formal requirements of a legacy."

[18]This is the first definition of the *dynatoi* in the tenth-century legislation. For discussions of power, influence, and patronage in Byzantine society, see Saradi, "*Archontike dynasteia*": 89-99; Margaret Mullett, "Patronage in action: the problems of an eleventh-century bishop," in *Byzantine Church and People*, ed. Rosemary Morris (Birmingham, 1990), pp. 125-147, and idem, "Byzantium: A friendly society?" *Past and Present* 118 (1987): 3-24; John Campbell, *Honour, Family, and Patronage: A Study of Institutions and Moral Values in a Greek Mountain Community* (Oxford, 1964), pp. 213-262; see also Cheynet, *Pouvoir et contestations*, 287-301, on the vocabulary and means of dependence.

the sellers of the price received in secret, and both items will be conveyed to the public treasury so that they may be transferred from the public treasury to the neighbours. If they are caught in some such intrigue before taking the oath, the transaction will be invalid, and the vendor who once attempted to alienate the property illegally will be compelled even against his will to sell to those persons to whom we have granted right of pre-emption.

II.1. We forbid the *dynatoi* henceforth to acquire anything, whether by way of adoption or gift, ordinary or *mortis causa*,[16] by testamentary disposition, by use alone, or by some form of protection or support, from the less well to do unless they are their relatives. They are not to arrange new purchases, rents, or exchanges in any villages and hamlets with the inhabitants of these places.

1 A. If the estates being sold are farmlands belonging not to the *dynatoi* but to other persons, and if so-called klasmatic lands[17] or other property in its possession are being sold by the public treasury, the same inhabitants are likewise to be given preference. If they decline of their own free will, then the *dynatoi* are also allowed to make transactions.

2. Considered to be *dynatoi* are those who, even if not personally but through the influence of others with whom it is common knowledge that they are connected,[18] are capable of intimidating sellers or satisfying them with a promise of some benefaction. Should one of the *dynatoi* attempt this sort of intrigue, he will be deprived of the property and be compelled by the treasury to pay the full price for it.

3. After the passage of ten years without contest against those who made some sort of transaction, received gifts, or acquired something by testamentary disposition, however, there will be no claim from any of the persons given preference here or from the treasury.

[17]klasmatic lands: literally "detached lands". Lands abandoned by their owners were reassessed at a reduced tax liability for a period of thirty years, whereupon they escheated to the crown, to be sold or otherwise transferred to new owners without claim or contest from the former owners or their heirs. Cf. *ODB* 2: 1152; Kaplan, *Hommes et la terre*, pp. 405-406; Mark Bartusis, "'ΕΞΑΛΕΙΜΜΑ: Escheat in Byzantium," *Dumbarton Oaks Papers* 40 (1986): 55-81; Nicolas Oikonomides, "Das Verfalland im 10.-11. Jahrhundert: Verkauf und Besteuerung," *Fontes Minores* 7 (1986): 161-168; and below, p. 66, n. 11.

Version 2

III.1.[19] In addition to these matters we command that all the military lands alienated in any manner whatsoever within a period of thirty years, or which are likely to be alienated after this time, must revert once more to the obligation and service of their respective *strateia* without repayment, unless enough [land] is left to the *stratiotes* even after the alienation to allow for someone registered for military service to fulfill the new *strateia*. The amount to which he falls short is the amount to which the alienation is rescinded.[20]

[19]Scholars (cf. Haldon, "Military lands": 32, 35) have proposed that this paragraph represents the third section of Nikephoros Phokas's decree raising the minimum inalienable value of the military lands (**M**). This reattribution is tempting, but it is conceivable that this paragraph precedes Constantine VII's legislation on the military lands (**E**): 1) it makes no mention of a minimum inalienable value; 2) it cites a time limit fixing possession of military lands by prescriptive right as thirty years, at variance with Constantine's term of forty years; 3) the "new *strateia*," taken by some scholars to refer to a new category of military service (heavy cavalry) introduced by Phokas, may simply refer to the reconstitution of the *strateia* once the *stratiotes* had recovered his military property. Pending further evidence, the question of the paragraph's rightful place must remain open.

[20]In other words, if a *stratiotes* had sold military lands to another person, but retained enough land to support his military obligations (or the obligations of someone else serving in his stead), the buyer is allowed to keep the land he bought. If after the sale, however, the *stratiotes* does not possess enough land to support his military service, he may reclaim from the buyer (without repayment) the amount of property he needs to bring his landed wealth level with his military obligations; the rest of the military property sold by the *stratiotes* may remain in the possession of the buyer.

C

ROMANOS LEKAPENOS BARS THE POWERFUL FROM THE VILLAGE COMMUNES

This novel, issued by the emperor Romanos Lekapenos in September 934,[1] opens a new stage in the land legislation. According to the reports of the chroniclers, two disasters, unparalleled in severity, struck the Byzantine countryside during the year 927-928:

> In the same year there was an unbearable winter with the result that the ground was frozen for 120 days. A great famine exceeding those of the past followed upon this winter. So great was the loss of life that the living could not bury the dead.[2]

[1]The date of September, in the eighth indiction, in the year 6443 (1 September 934–31 August 935) is one of four given by the rubrics. This date is supported by the legislator's reference in section II.2 to "the previous first indiction," in other words, the first indiction year of the current cycle (coinciding with the year between 1 September 927–31 August 928), and by his allusion in the epilogue to recent conquests of "lands, towns, and cities," referring to the achievements of the great general John Kourkouas, whose triumphs along the eastern frontiers in the early 930's were capped by the capture of Melitene on 19 May 934 (it is interesting to note that the accounts of Kourkouas's campaigns in *Theophanes continuatus*, especially pp. 426^{24}–427^{2}, 429^{4-5}, echo the wording of the epilogue). The same rubric also supplies titles for each section of the novel, which are omitted here. Other rubrics record dodecasyllabic verses commemorating the novel: "The Lord Romanos set a new law / Which he issued for victims of injustice."

The *magistros* Kosmas, named in one rubric as the author of **B**, is also named in several rubrics as the author of **C**. His rise to high judicial office during Romanos's reign, coupled with the references in the sources to his expertise in the law, lend credence to these attributions. Described as "wise and learned in the law, the foremost of the civil judges" (cf. *Theophanes continuatus*, pp. 433^{12-15}, 443^{8-9}), Kosmas is known to have resolved a land dispute and to have issued a decision on the status of *paroikoi* (dependent peasants); his career also included service as an envoy when he was chosen to take part in an embassy sent by Constantine VII in 946 to negotiate an exchange of prisoners with the Arabs. See *ODB* 2: 1152; Gunter Weiss, "Die Entscheidung des Kosmas Magistros über das Parökenrecht," *Byzantion* 48 (1978): 482-484; Leendert Westerink, *Nicétas Magistros. Lettres d'un exilé (928-946)* (Paris, 1973), pp. 94-95, 136; Magdalino, "Justice and finance": 103-104.

[2]Skylitzes, p. 225^{90-95}; *Theophanes continuatus*, p. 417^{15-19}.

The sources record the efforts undertaken by Lekapenos to relieve the hunger and suffering brought upon his subjects by these disasters; but in the legislation which he enacted in response to the crisis in the countryside, the emperor took action against an affliction — the greed and opportunism of persons who had exploited the misery of the populace to enrich themselves — which he deemed even more cruel than the devastation and distress wrought by the famine.

Lekapenos's novel is as remarkable for its strident rhetoric as for the measures which it introduces. The emperor's reminder in the prologue of the divine retribution awaiting the persecutors of the poor, his vigorous assertion of the emperor's role as God's defender of the poor and downtrodden, and his denunciation of persons who profit from the misfortunes of others retail themes drawn from imperial rhetoric and the Old Testament;[3] but these themes are expressed all the more forcefully in this novel since the persons decried as oppressors of the poor are in effect guilty not of legal but of moral transgressions, in that they have used the hardship and desperation caused by the famine to acquire lands at little or no cost from the ruined owners.

The aims of the legislation are to restore the status quo in the countryside prior to the famine, and to preserve the village communes which form the basis of the crown's civil and military revenues. To these ends, the emperor henceforth bars *dynatoi*, here classified as dignitaries and officials in the civil, military, ecclesiastical, and monastic hierarchies, from acquiring property in village communes, and nullifies acquisitions of land by these persons retroactively to the year of the famine. All lands purchased or acquired from this time forward must revert to the original owners.

The legislator goes on to set the terms governing repayment of the purchase price, ruling that buyers who acted in good faith are entitled to reimbursement over a set period, whereas those guilty of bad faith or

[3]The theme of imperial mercy and intercession (*philanthropia*) combines with that of the emperor's authority deriving from God: cf. Hunger, *Prooimion*, pp. 49-58, 143-153. The theme of the wicked spurning God's vengeance in their persecution of the poor and weak recurs throughout Psalms 9-14. It is possible that the emperor's reasoning and provisions were guided by a passage in Leviticus 25: 23-38, in which God ordains that every fifty years all dispossessed homes and lands must revert to their original owners; this measure defends the interests of the lowly, in that it restores their ancestral properties, relieves them of debt obligations, and counters the injustice of the few gaining more and more while the many have less and less.

coercion deserve no compensation. In future, declares the emperor, the powerful persons enumerated in this novel who acquire property in village communes will be evicted without compensation and forced to pay a fine equal to the value of the property to the treasury, which will use this income for the relief of the poor. Violators not ranking among the powerful will be evicted without reimbursement but will not be fined.

The novel concludes with the emperor's pledge to deliver his subjects from their internal oppressors as effectively as he had freed them from external enemies. Here Lekapenos returns to the theme developed in the prologue, that of the emperor acting as the defender of his people; but within the impassioned rhetoric of the epilogue lie allusions to recent events which help to explain the emperor's remarkable declaration of his intention to secure the "freedom" (*eleutheria*) of his subjects with "the cutting sword of the present legislation."[4]

The emperor's claim to have liberated his subjects from external attack is based on the Byzantine army's capture of Melitene in May 934, just four months before the legislation was issued. This feat of arms was a pivotal event in the Byzantine-Arab wars along the eastern frontiers. Melitene had been for two centuries a base for Arab raiders, and its capture freed much of central Anatolia from the threat of attack. It also liberated the subjects of the Byzantine Christian realm from the presence of an alien religion, for following the town's capitulation, only the few Muslim inhabitants willing to convert to Christianity were allowed to remain, while the rest were expelled and replaced with Christian settlers.

Imperial arrangements with regard to the captured town demonstrate that the emperor's pledge to deliver his subjects from the enemy within was not empty rhetoric. The region of Melitene was immediately repopulated and made into an imperial curatory, supervised directly by crown officials, for the specific purpose of preventing the *dynatoi* from intruding into the fertile

[4]The emphasis on freedom in the epilogue is very striking and has not received the attention it deserves. To the Byzantines, as to the Romans, persons were either free or slaves, and were either independent, "in their own power," or in the power of someone else: cf. Alexander Kazhdan, "The concepts of freedom (eleutheria) and slavery (duleia) in Byzantium," in *The Concept of Freedom in the Middle Ages: Islam, Byzantium and the West*, ed. George Makdisi, Dominique Sourdel, and Janine Sourdel-Thomine (Paris, 1985), pp. 215-226. In reiterating his purpose to free the peasant landowners from the domination of the *dynatoi*, Lekapenos adheres to the traditional understanding of the term.

plains surrounding the town and gaining new estates.[5] Lekapenos's policy of establishing crown lands in conquered territories thus complemented his land legislation, in that both aimed to block the acquisition of land by the *dynatoi* and to free the peasant landowners from their domination.

There is another event, however, which may have stirred Lekapenos to portray himself so vehemently as the defender and deliverer of his subjects. According to the chronicles, about the year 932, a man named Basil appeared in the Opsikion theme where he attracted a large number of followers by claiming to be Constantine Doukas, an aristocratic pretender to the throne killed in a failed coup in 913, but whose heroic image had endured in popular memory. Apprehended and taken to Constantinople, Basil suffered the loss of a hand as punishment, but he made his way back to the Opsikion theme (where he had a new hand of bronze fashioned for himself — hence his epithet Chrysocheir, "the copper hand"). He then regathered his followers and led them in what the sources call a "great uprising" against the emperor Romanos, which inflicted widespread pillaging in the Opsikion theme and neighbouring regions before it was finally suppressed and its leader put to death.[6]

The brief accounts of this episode say nothing of the motives behind the revolt, but the description of Basil's followers as "a rabble" strongly suggests that they were peasants reduced to desperation by the famine and the lack of relief. The outbreak of an uprising, in a district very close to the capital, may have been the event which alerted the central government to the depth of misery and the severity of the crisis in the countryside, while the danger of someone posing as a champion of the downtrodden and rising in rebellion would not have been lost on Lekapenos, whose status as a usurper undermined his own claim to the throne. In this light, it was all the more urgent for the emperor to cast himself as the God-given ally and protector of the poor, to emphasise his efforts to free his people from their enemies and oppressors, and to shift the focus of popular discontent to the powerful

[5]Oikonomides, *Listes*, 356; Howard-Johnston, "Crown lands": 85-88.

[6]*Theophanes continuatus*, pp. 421^{7}–422^{2}; the sources and events of Basil Chrysocheir's revolt were reviewed by Alexander Kazhdan, "'Velikoe vosstanie' Vasiliya Mednoi Ruki," *Vizantiiskii Vremennik* 4 (1951): 73-83. Written at a time when Russian scholars were obliged to hail Josef Stalin as the guiding light of Soviet Byzantinology, Kazhdan's article places undue emphasis on the revolt as an example of class struggle, but it remains the only study to have suggested a link between Basil's uprising and the promulgation of Lekapenos's novel.

persons enumerated in his legislation, who posed the most serious threat to his authority.

Lekapenos's novel of 934 is the cornerstone of the land legislation. It established the "powerful" as a legally defined category, and made the year of the famine the starting point for the new rules governing the sale or transfer of property. The regulations and restrictions introduced here are confirmed or elaborated on by nearly all subsequent land legislation.

TEXT Svoronos, *Novelles*, pp. 72-92 (document no. 3); Zepos, *JGR* I: 205-214.

LIT. Lemerle, *Agrarian History*, pp. 94-97, 108-109; Kaplan, *Hommes et la terre*, pp. 421-426.

NOVEL OF THE LORD EMPEROR ROMANOS THE ELDER

PROLOGUE To dispose the soul in imitation of the Creator is the desire and ardent endeavour of those for whom it is a great and blessèd thing to regard and to call themselves the work of the all-creating hand. As for those by whom this has not been accounted great and holy, they have the task of denying the Creation and the reckoning of Judgement, and, as with persons wholly content with life on earth and who choose to live their lives upon the earth alone, the display of their choice has been left in their wake.[7] Hence the great confusion of affairs, hence the great tide of injustices, hence the great and widespread oppression of the poor, and the great sighing of the needy, for whose sake the Lord rose from the dead. For He says, "For the oppression of the poor, for the sighing of the needy, now will I arise, saith the Lord."[8] If God, our Creator and Saviour, Who made us emperor, rises in retribution, how will the poor man, who awaits only the eyes of the emperor for intercession, be neglected and altogether forgotten by us? Therefore, not only upon examination of the actions taken against them in the recent past or attempts to make amends, but also administering a

[7]The Greek text is obscure. The general sense seems to be this: people who see themselves as part of God's Creation try to act in accordance with God's ways, while people who do not venerate the Creation will have to reckon with the Last Judgement; such people have left ample evidence behind them of their choice to ignore divine justice and to lead their lives in pursuit of earthly, not eternal, rewards.

[8]Psalms 12: 5.

common and lasting remedy to the matter, we have issued the present law to avenge them, having prepared this as a purgative and a cleansing of the predilection of greed.[9] We have considered it advantageous that now no longer will anyone be deprived of his own properties, nor will a poor man suffer oppression, and that this advantage is beneficial to the common good, acceptable to God, profitable to the treasury, and useful to the state. Careful attention to this subject, for the sake of which decrees and judgements restraining the wickedness of the will and curtailing the reach of the grasping hand have streamed down to all the officials under our authority, has not been long neglected, nor has [our concern] arisen inappropriately. But since evil is versatile and multifarious, and all evils — not least greed, if indeed not even more so — contrive to evade the grip of laws and edicts and to regard the inescapable eye of divine justice as of no account, these measures, ejecting and excising the crafty workings of the will of the evildoers, have as a result now warranted more secure and rigorous codification.

I.1. We ordain therefore that those living in every land and district, where after God our rule extends, are to keep the domicile which has come down to them free and undisturbed. If time continues to preserve this arrangement, let the subsequent acquisition by the offspring or relatives through testamentary disposition, or the intention of the owner's preference, be fulfilled. If, though, given the course of human life and the ebb and flow of time, the pressure of necessity or even the prompting of the will alone, be it as it may, the owner embarks on the alienation of his own lands either in part or in whole, the purchase must first be set before the inhabitants of the same or adjacent fields or villages. We do not introduce this legislation out of animosity or malice towards the powerful; but we issue these rulings out of benevolence and protection for the poor and for public welfare. Whereas those persons who have received authority from God, those risen above the many in honour and wealth, should consider the care of the poor an important task, these powerful persons who regard the poor as prey are vexed because they do not acquire these things more quickly. Even if such impious conduct is not true of all, let adherence to the law be common to all, lest the tare brought in with the wheat escape notice.[10]

2. As a result, no longer shall any one of the illustrious *magistroi* or *patrikioi*, nor any of the persons honoured with offices, governorships, or

[9]The emperor as healer: cf. Hunger, *Prooimion*, pp. 130-137.

[10]Echoing the parable of the wheat and the tares related in Matthew 13: 24-30; 36-43.

civil or military dignities, nor anyone at all enumerated in the Senate, nor officials or ex-officials of the themes,[11] nor metropolitans most devoted to God, archbishops, bishops, *higoumenoi*, ecclesiastical officials, or supervisors and heads of pious or imperial houses,[12] whether as a private individual or in the name of an imperial or ecclesiastical property, dare either on their own or through an intermediary to intrude into a village or hamlet for the sake of a sale, gift, or inheritance — either whole or partial — or on any other pretext whatsoever. As this sort of acquisition has been ruled invalid, the acquired properties, along with the improvements since added, are to return without refund to the owners or, if they or their relatives are no longer alive, to the inhabitants of the villages or hamlets. For the domination of these persons has increased the great hardship of the poor, bringing upheavals, persecutions, coercion, and other concomitant afflictions and difficulties through the multitude of their servants, hirelings or other attendants and followers, and, to those able to see it, will cause no little harm to the commonwealth unless the present legislation puts an end to it first. For the settlement[13] of the population demonstrates the great benefit of its function — the contribution of taxes and the fulfillment of military obligations — which will be completely lost should the common people disappear. Those concerned with the stability of the state must eliminate the cause of disturbance, expel what is harmful, and support the common good.

II.1. Let time hereafter maintain these measures for the common benefit and settled order of our subjects; but it is necessary to apply the approved remedy not only to the future, but also to the past. For many people seized

[11]This list of powerful persons complements the definition given in **B**. It may be helpful to explain that the Byzantines distinguished between titles or dignities on the one hand, and functions or offices on the other; the former were honorific ranks in the imperial hierarchy and court ceremonial, while the latter were positions in the civil or military administrations (cf. *ODB* 1: 623; 3: 1513). The Byzantine Senate was an advisory body whose members were high civil officials and dignitaries (cf. *ODB* 3: 1868-1869, 1869-1870). For examples of crown and church officials exploiting their rank to make transactions on terms favourable to themselves, cf. Saradi, "*Archontike dynasteia*": 89-117, and Thomas, *Private Religious Foundations*, pp. 143-148.

[12]*euageis oikoi*: these were philanthropic foundations administered by crown officials: cf. *ODB* 2: 736; Michel Kaplan, "Maisons impériales et fondations pieuses: réorganisation de la fortune impériale et assistance publique de la fin du VIII[e] siècle à la fin du X[e] siècle," *Byzantion* 61 (1991): 340-364.

[13]κατοίκησις: translated as "settlement," the word also embraces the notions of stability and prosperity among the rural populace.

upon the indigence of the poor — which time bringer of all things brought, or rather, which the multitude of our sins, driving out divine charity, caused — as the opportunity for business instead of charity, compassion, or kindness; and when they saw the poor oppressed by famine, they bought up the possessions of the unfortunate poor at a very low price, some with silver, some with gold, and others with grain or other forms of payment. Harsher than the duress at hand, in those times which followed they were like a pestilential attack of disease to the miserable inhabitants of the villages, having entered like gangrene into the body of the villages and causing total destruction.[14]

2. Therefore, from the previous first indiction (that is, from the advent or passage of the famine),[15] those illustrious persons, whom the present decree prescribes above be prohibited, who have come into control of hamlets or villages and have there acquired further properties either in part or in whole, are to be thence expelled, recovering the price they paid either from the original owners or from their heirs or relatives, or if these persons do not have the means, from the joint taxpayers, or even from the commune coming forward to return the price. As far as the improvements to these properties are concerned, whether the aforementioned persons have the means and are willing to pay the requisite amount, or do not have the means and are unwilling, the persons being evicted are to depart, taking their materials with them on the condition that they added them at their own expense and that these materials too are not proven to come from the resources or labour of the poor.

3. These are the rules concerning an apparently fair acquisition by purchase. But we rule that gifts or inheritances, or other similar and craftily devised acquisitions or seizures, both past and present, are invalid, with the connivers unable to seek anything in return for them. These are to be restored at no cost to the respective owners or, if they perchance have slipped off this mortal coil, to their descendants or relatives, or if they too are no more, are to be given to the joint taxpayers.

[14]The comparison of speculators with pestilence and gangrene is drawn from novels 32, 33, and 34 of the emperor Justinian (527-565). This emperor denounced the greed of those who exploited a famine in the provinces of Thrace and Illyria in 535 to acquire the lands of desperate farmers in return for a bit of grain or fruit, and likened their rapacity to an attack of pestilence. (Translations of these novels appear in Scott, *The Civil Law*, 16: 183-187.)

[15]From 1 September 927 to 31 August 928.

III.1. If divine providence has looked upon some persons more favourably, or for incomprehensible reasons has in other cases changed the state of their present life for the better, raising them from a humbler lot and elevating them to a higher one, we rule that they must remain with the inheritance and property which they originally received, and that those persons who extended the measure of their own good fortune by pillaging their less fortunate neighbours are not to succeed. For [pillaging] is a more appropriate label for the transactions with the poor on the part of persons exulting in the grandeur and glory of earthly splendour, since the difference between persons is outlined in many ways every day and clearly proclaims that the dealings were not mutual or beneficial or harmonious, not only in the way they were calculated beforehand but also in the way they turned out. Those conscious of the workings of divine favour on their behalf ought rather to have dealt more kindly with their neighbours, and realising the uncertainty of fortune and the inevitability of divine judgement ought not to have seized their neighbours' possessions, if they themselves did not wish to be punished by the judgement set forth.[16]

IV.1. As for those who came into possession of these properties before the dates ordained, if they are seen to have remained in the same state, we allow them to remain [in possession], subject to the same restriction against acquiring adjacent property applied to the others.

2. If any persons are proven to have been overbearing and oppressive towards their neighbours, inflicting intermittent or continual grievous injuries upon the poor, they are to be expelled and banished, accepting the loss of their own possessions as the due reward for their harsh and greedy disposition.

V.1. The restitution of prices, mentioned earlier, which requires a more orderly and minute inquiry, has not received a simple and careless examination. For if the sale has been completed free and unforced, and the payment of the price is seen to be fair, the rule of restoration will justly be upheld, remedying the indigence of poverty with a minor addition of law concerning the immediate restoration and restitution of the lands to the sellers or their heirs or relatives or, in their absence, to the members of the same tax community. If they have the means, they

[16] *τῷ προκειμένῳ ... κρίματι*: an expression seeming to refer both to the present edict and to the Judgement of God to come, echoing the emperor's warning in the prologue.

are to repay the price paid originally, but they are not to be pressed for immediate repayment if they do not, since the exaction now imposed should not appear to them more burdensome and insupportable than the profit expected in the future [is worth]. Otherwise, because of the immediate exaction, many people with a devious, stingy mind will feel no shame in not waiting calmly to arrange the outcome of the terms prescribed. For they will leave nothing contributing to the accomplishment of their own objectives unattempted, nothing untried, those people who in their passionate greed and meanspiritedness are engrossed in so great a pursuit of gain, who consider none of the ways to achieve wealth disgraceful, and who impose the burden of their interference on the freedom [of others].

2. But to forestall new tricks and fulfill the regulations, let a term of three years be set as a waiting period, sufficient to bring prosperity to the poor man and to save up the refund painlessly. Humanity should be woven into and combined with expedience in legislation,[17] now that an extension of the time limit has been introduced. Now that the decision concerning these matters has been pronounced, it [would not be] foreign or alien to the laws that persons caught violating the conditions get the profit they deserve from their own labours and be deprived of further rights to the land. Yet ever combining the rigour of severity with a humane mind, we have prescribed the deferment of three years in place of the eviction [that would be] appropriate, subjecting the wrongdoers to moderate punishment, duly offering aid and comfort to the poor deserving of pity by means of the deferment, and administering as well as sanctioning the remedy for both sides in equal measure.

3. We have heard that some have gone to such lengths in their desire for wealth as to seize — for how could I say "purchase" and not "greedily gulp down"? — the possessions of the poor at a very cheap price. The difference between intention and action has resulted in different and unequal settlements in times previous. And so, if the true value of the lands sold is found to be over twice the price paid, the purchasers are to be expelled without refund. If the difference is not equal to this amount, but results in fraudulent deprivation and harm to the sellers all the same, and the profit from the income already derived therefrom is equal to the payment of the price, let the purchasers seek nothing further. If the prof-

[17]Another expression of imperial philanthropy: Hunger, *Prooimion*, pp. 152-153.

it is less, they are to receive the difference from the persons claiming legal right to the reclamation of their lands.

VI.1. But let the measures which now seem well in order admit of no confusion on the pretext that someone has become a monk or intends to become a monk and has conferred his own property to a holy monastery — given that the measures furnish sufficient assistance from the present decision, namely, the receipt of the fair price of the property — as long as the conferment has truly been made for sake of salvation and not by deception, intrigue, or carefully crafted ruse. This [ruling] will prove to be no less beneficial to the holy houses than to the poor, as the monasteries are released from strife, disputes, and sordid acquisition, avoiding and not encountering findings and possessions bringing ruin upon those who are living men, still bound to the flesh, and who have vowed to remain immune from the sins of mankind.[18]

VII.1. These judgements have been rendered in a very benevolent manner, punishing insatiable covetousness quite moderately, and introducing a measure beneficial to the commonwealth, that no longer are any of the illustrious *magistroi* or *patrikioi*, nor any one at all of those honoured with offices, magistracies, or imperial dignities, nor civil, military or thematic officials or ex-officials, nor metropolitans, archbishops, bishops, *higoumenoi*, or heads of pious foundations, or others who have in some other way attained worldly or ecclesiastical eminence, to enter into possession of villages or hamlets by way of sale, gift, or any other means. We ordain that persons determined to attempt such a thing after the passage of the present decree are to be evicted therefrom without refund and deprived of their own labours and improvements, and, if they are illustrious persons, they are to pay the price of the acquisition to the treasury, not for the profit of or contribution to the treasury (for how could we, in our endeavours to restrain the insatiable covetousness of others, shamelessly issue this ruling for our own gain, and show ourselves to be guilty of acting not for the common good but for our own?) but for the care of the poor, while the less well to do are to be expelled without refund, chastened by the appropriate punishment.

EPILOGUE It is our desire that these regulations remain in force for the safety of our subjects for whose sake great and constant care is our

[18]In other words, these rules will ensure that the monasteries will be untouched by scandal and legal claims arising from improper acquisitions of property.

concern. For if we have expended so much care for those under our authority, so as to spare nothing that contributes to freedom, on account of which lands, towns, and cities have, with the help of God, come into our hands from the enemy, some as the result of war, while others have passed over to us by the example [of the conquered towns] or through fear of capture and were taken before the trumpet's call to battle; and if we have striven, with the help of God, to provide our subjects with such great freedom from enemy attack, setting this as the goal of our prayers and exertions, how will we, after accomplishing so much against the onslaught of external enemies, not rid ourselves of our own enemies within, enemies of the natural order, of the Creation, and of justice, by reviling and repressing insatiety, by excising the greedy disposition, and by liberating our subjects from the yoke of the tyrannical, oppressive hand and mind with the righteous intention to free them with the cutting sword of the present legislation? Let each of those to whom judicial authority has fallen see to it that these provisions remain in force in perpetuity, for the service of God and for the common benefit and advantage of our empire received from Him.

IN THE MONTH OF SEPTEMBER OF THE EIGHTH INDICTION IN THE YEAR 6443 FROM THE CREATION OF THE WORLD, ROMANOS, CONSTANTINE, STEPHANOS, AND CONSTANTINE, EMPERORS OF THE BYZANTINES AND FAITHFUL TO GOD.

Gold solidus of Romanos I Lekapenos

D

CONSTANTINE VII REINFORCES THE LAWS AGAINST THE POWERFUL

Constantine's novel of March 947, dictated by the *patrikios* and *quaestor* Theophilos,[1] has come down in two versions, one directed to the theme of the Thrakesians, the other to the Anatolikon theme.

The prologue explains that the existing laws have not deterred powerful persons from seizing properties and driving the poor from their lands, nor have the judges, yielding to pressure from the powerful, applied the regulations consistently in all cases. To halt these abuses and to eliminate inconsistency in the law, Constantine strengthens the sanctions introduced by Romanos Lekapenos by calling for the eviction of all persons proscribed in **C** who have acquired properties from the day of his proclamation as emperor (27 January 945), and nullifies all illicit transactions from the time of the famine. Where the restitution of purchase prices is concerned, the emperor introduces a provision intended to assist judges in the resolution of cases, stating that persons with assets of less than fifty *nomismata* count as indigent and need not refund the price of the lands they are recovering. Persons with assets above this limit are obliged to repay the purchase price over a set term.

Constantine's novel further clarifies the distinction between powerful and poor persons before the law, as well as the rules and obligations applying to either category. It proposes equitable measures for the restitution of purchase prices and costs for improvements, and makes allowance for alienations of property made in pressing circumstances, as long as the owner alienates his land to members of his own village or villages

[1]Theophilos is first mentioned as the Eparch of the City (i.e. the urban prefect or chief magistrate of Constantinople; cf. *ODB* 1: 704) during the reign of Romanos Lekapenos. He was promoted to *patrikios* and *quaestor* shortly after the accession of Constantine VII in 945 (*Theophanes continuatus*, p. 444[6-8]). In addition to **D**, he is cited as the author of Constantine's first novel on gratuities (*Zepos, JGR* I: 218-221), and he may well have been the author of the same emperor's novel on the military lands (**E**). See the comments of Svoronos, *Novelles*, pp. 105-109.

within the same tax district. Even though his purpose is to protect the poor from the depredations of the powerful, Constantine is willing to recognise honest transactions and to defend the interests of parties technically defined as *dynatoi*, but whose modest means put them on roughly equal footing with others classed as poor.

A contemporary source refers to Constantine's decree directly. The reasons behind its promulgation are recorded in *Theophanes continuatus* in a passage indicating the chronicler's familiarity with the text:

> The emperor even issued a law, for as he beheld the widespread greed spilled forth from the insatiable officials who were infiltrating into the midst of districts and villages and oppressing the miserable poor, and from the powerful persons who rapaciously acquired domains by using wily methods, he resolved to bring about their expulsion. What did he, wise in all matters, do? After meeting with his attendant council, he ruled in a decree that the wealthy persons who had infiltrated into villages and taken over properties and villages by making purchases or accepting gifts were to be expelled without repayment, and he repressed a small measure of the harmfulness and greed of the insatiable.[2]

TEXT Svoronos, *Novelles*, pp. 93-103 (document no. 4); Zepos, *JGR* I: 214-217.

LIT. Lemerle, *Agrarian History*, pp. 97-98; Kaplan, *Hommes et la terre*, pp. 426-430.

[2]*Theophanes continuatus*, pp. 447^{13}–448^{2}; Laiou comments on the decree's evidence for the concepts of law and justice in the tenth century in "Law, justice, and the Byzantine historians: ninth to twelfth centuries," in *Law and Society in Byzantium*, pp. 167-172.

NOVEL OF THE LORD EMPEROR CONSTANTINE PORPHYROGENNETOS CONCERNING THE ENCROACHMENT OF THE POWERFUL UPON THE COMMUNITIES OF THE POOR, WHICH THEOPHILOS *PATRIKIOS* AND *QUAESTOR* DICTATED IN THE MONTH OF MARCH IN THE FIFTH INDICTION IN THE YEAR 6455

PROLOGUE Our Majesty appointed by God has learned from many quarters that powerful and influential persons in the theme of the Thrakesians, in defiance of imperial legislation, natural justice, and our command, do not cease from infiltrating into village communities by means of sales, gifts, and inheritances, and on such pretexts oppressing the miserable poor and making them fugitives from their own properties. As a result, on the basis of a general appraisal we are issuing and setting a general law and ruling in all our themes, as follows:

[VERSION 2 We have received word of the destitution and indigence among the people in the Anatolikon theme and of their oppression at the hands of the powerful, by whose insatiable and covetous minds we have been greatly distressed, since neither law nor fear of the emperor has restrained their greed. As a result, on the basis of a general appraisal we are setting and issuing a general ruling in all our themes, as follows:]

1.1. Even though those persons and houses, imperial and pious, excluded by imperial legislation from purchasing from the commune of villages or from individuals — especially those precluded before the legislation from the time of the first indiction of the previous cycle[3] — are excluded more strongly after the legislation, the majority of the powerful have not abstained from transactions most ruinous to the poor, with the result that the judges, driven more by the pressure exerted upon them than by choice, render different decisions on different occasions in their treatment of these cases.[4]

2. Wherefore a general decision concerning these matters has come into force with our imperial approval, to the effect that unambiguously and immediately all persons prohibited from making purchases by the

[3] *ἀπὸ τῆς προπαρελθούσης πρώτης ἰνδικτιῶνος*: an important point of chronology, since the first indiction of the current cycle coincided with the year between 1 September 942 and 31 August 943, whereas the first indiction of the previous cycle ran from 1 September 927 to 31 August 928, the year of the famine.

[4] On this and other contemporary references to the misconduct or favouritism of judges, see Saradi, "Byzantine tribunals": 174-183.

said legislation are to be evicted, with no right of recovery for expenditures, [namely, those] persons who from the day of our proclamation as emperor have clearly been so bold as to infiltrate into village communes or hamlets, or into immovable property of poor persons.

II.1. Where matters from the first indiction are concerned, that is from the time of the famine until the day of our proclamation, one and the same decision defined here is to be uniformly enforced, to the effect that every gift and inheritance, and the settlements and ratifications between those persons already under exclusion, contrived with a view to circumventing this law, are inoperative and will be considered null and void, nor need the sellers fear any obligation whatsoever for the payments made in these transactions.

2. Furthermore, even exchanges are to be nullified, with each party taking back what was originally his, unless perhaps the poor man opposes this, inasmuch as being formerly in joint ownership, not only has he marked off his holding separately to be free of interference, but also because he received the better part of the deal.

3. Where sales are concerned, they too are to be nullified, with the immediate restoration of properties sold to the sellers, or to their heirs and members of the same tax community in conformity with the first act of legislation.

III.1. Where prices are concerned, the persons and circumstances are to be taken into account. If the purchaser was a *dynatos* or a familiar of a *dynatos*, whether lay or ecclesiastical (perchance a bishop), and the seller is one of the indigent, with means of less than fifty *nomismata*,[5] the repayment of the price is forgiven. But if [the seller] has means above fifty *nomismata*, he will, with forbearance [from the buyer], repay the price after the term of three years, enjoying the same privileges as the commune even if he is a *scholarios* or [an official] enrolled in the civil bureaux. If the commune was the seller and does not have the means to make repayment, let it have over and above this a term of as many years as the judge deems sufficient for repayment of the price from future harvests. If the seller or sellers prove that they were in

[5]The definition of the "poor" as persons with assets of less than 50 *nomismata* goes back to the fourth century and is cited in the *Digest* 48.2.4; it is repeated not only here but also in the *Procheiros Nomos* and the *Peira*: cf. Saradi, "*Archontike dynasteia*": 96, with references.

any way subject to coercion or duplicity in the sale, or that they were wronged and intimidated by the purchaser or members of his household before the sale, they do not have to make repayment, even if the buyer is not one of the powerful.

2. Monasteries of modest means, the *protospatharioi* resident in the City guarded by God,[6] and lower ranks of officialdom who happen to have bought without coercion or injustice of any kind whatsoever, and are not backed by the patronage of powerful persons, will recover not only the prices but also any profit-producing expenditures such as the planting of vineyards and the construction of water-mills. They may also remove the materials of their own buildings, without damaging the state of things as they were before, if they do not receive the costs for these.

3. If the means to restore the amounts owed are lacking, properties sold at an earlier date are to be entrusted to a third party for a length of so many years until the price owed or the aforementioned costs can be collected from a future harvest not already spoken for. Otherwise, the property is to be held by the alienator, with due care and security in the gathering of the crops so that these can be stored up to pay off the buyer, who has the authority to supervise this so that the crops are not lost.

4. If the alienator has sufficient means from other sources to provide for himself, he must turn the entire harvest over to the transactor, whereas if he does not have sufficient means, an appropriate amount from the harvest will be retained by the alienator for his necessities and for the cultivation of the land, while all the rest will be given to the party who made a transaction with him.

IV.1. If an alienation has taken place, or is about to take place, from the more illustrious members of the commune to their equals or to those slightly inferior in rank, perchance from *scholarioi* to *stratiotai*, or from the less well to do to those a little above them, as for instance from citizens not enrolled in state service to *scholarioi* or members of the civil bureaux, let it remain as it is. The same holds true if, owing to an exaction from the fisc or perchance a desire to furnish a dowry for his daughter in another district, an individual cannot provide for the tax owed or the burden imposed from other sources, or the promised dowry in movable goods; and for this reason an alienation may be made

[6]A standard epithet for Constantinople.

from immovable properties, yet only to fellow villagers, or if need be, to villages in the same fiscal district or in the same fiscal region.[7]

2. And so in the same way, if a powerful person is making a sale or alienating in some other manner, it has been resolved[8] that the villagers have right of pre-emption in cases where they are in joint ownership,[9] or if they cannot manage without [the alienator's] grazing land, water supplies, or woodlands.[10] If some part of the alienator's property is separately constituted,[11] they are compelled either to purchase the

[7]*κωμητούρα*: a term equivalent to *metrokomia*, used of a fiscal region containing several villages. Cf. Kaplan, *Hommes et la terre*, p. 214.

[8]*συνεωράθη*: on *συνοράω* in the meaning of "resolve" or "decide," see Ivars Avotins, *On the Greek of the Novels of Justinian* (Hildesheim and New York, 1992), p. 207.

[9]*ἀνακεκοινωμένοι*: the translation is guided by Dölger's remarks on *ἀνακοίνωσις* as a form of joint or common ownership; cf. Franz Dölger, *Beiträge zur Geschichte der byzantinischen Finanzverwaltung, besonders des 10. und 11. Jahrhunderts* (Leipzig and Berlin, 1927; reprinted Hildesheim, 1960), p. 142.

[10]The epitome of the novel here adds: "It is proposed on behalf of the purchaser that if he wishes to retain this [the property] only, he may withdraw from the lands held in common." On the use of woodlands in the Byzantine countryside, see Archibald Dunn, "The exploitation and control of woodland and scrubland in the Byzantine world," *Byzantine and Modern Greek Studies* 16 (1992): 235-298.

[11]*Idiosystaton* (more commonly *idiostaton*): this is discussed in the *Fiscal Treatise*, p. 116[1-23]: "The hamlets and estates called *idiostata* have come into being in this way. When the land has been struck off the tax register, perhaps owing to some enemy incursion or some other act of divine wrath, and there is the risk that the surviving neighbours will themselves abscond because they are liable also for the taxes of the lands struck off, an inspector sent by the emperor has come out and upon investigation remitted the tax on the lands wholly or partially struck off. If the heirs themselves return within the term of thirty years, the remittance is corrected anew. If they do not return and the term of thirty years expires, another inspector is sent out once more and converts that previous tax remission into registration as klasmatic land. Should matters take this course, as often happens, if the inspector who declared the properties *klasma*, or another successor of his, divides the land belonging to these klasmatic properties into a separate portion, marks it off, and registers it in the official cadaster, he will make and register the delimitation of the remaining total of the village's land separately also; thereupon this section of klasmatic land may be sold or granted, or given out by legal contract or lease, or transferred to a *sekreton*, and thus settled and improved. In these circumstances, a hamlet or estate is called *idiostaton*, since it falls within another delimitation and is not entered within the delimitation of the entire village. For *idiostaton* is property declared *klasma* by an inspector and subtracted by an inspector from the total land of the village, demarcated and marked off in a separate portion, so that it is not among the small parcels of land nor has any association with the remaining total of the village's land." On this passage, see Bartusis, "Escheat in Byzantium": 55-57, and Dölger, *Finanzverwaltung*, pp. 138-142.

whole of it or relinquish the whole of it. Let them have a term of four months for the collection of the price, the amount that another buyer would give, or instead, the amount of the assessed value of the property, if the poor purchasers choose this option.

EPILOGUE Now that these regulations have been ordained and legislated by our Majesty, we bid you read out this our pronouncement and legislation to all in the theme, from the powerful persons down to the lowest and last man, and examine and tend matters concerning the poor and the powerful in adherence to the contents and force of this decree.

Gold solidus/nomisma of Constantine VII

E

CONSTANTINE VII PROTECTS THE MILITARY LANDS

This important novel of Constantine VII, the first legislation to deal with the institution of the *stratiotika ktemata*, has come down without a date, but evidence drawn from the text and other sources points to a time early in Constantine's reign, and elucidates the context and purpose of the decree.

As noted in the general introduction, the promulgation of the decree coincides with Constantine's promotion of Bardas Phokas and his sons to the high command of the Byzantine army upon his accession as sole emperor in January of 945, and the escalation under their leadership of the Byzantine military offensives in Cilicia, Syria, and Crete. The decree seems also to have been part of a campaign undertaken by Constantine VII to weed out corrupt or incompetent officials. A passage in the third section of the decree, denouncing the venality, incompetence, and misconduct on the part of the army's commanders and officers, indicates that the legislation on the military lands accompanied a purge of the military administration launched by Constantine shortly after his accession. The sources record that the emperor sent a number of trusted subordinates to the provinces to remedy the abuses of corrupt officials:

> Fresh in the emperor's mind were the injustices and damages which the wretched and unfortunate poor had suffered at the hands of *strategoi*, *protonotarioi*, soldiers, and cavalrymen in the time of his father-in-law Romanos, and he despatched righteous and upstanding men to relieve the great burden of the excessive exactions imposed on the afflicted poor at that time. He sent the *magistros* Romanos Saronites to the Anatolikon theme, the *magistros* Romanos Mousele to the Opsikion theme, the *patrikios* Photios to the theme of the Thrakesians, Leo Agelastos to the Armeniakon theme, and others to the remaining themes in turn. At the emperor's behest they granted a small measure of relief to the poor.[1]

[1] *Theophanes continuatus*, p. 443[13-23]; see also Athanasios Markopoulos, "Le témoignage du *Vaticanus gr.* 163 pour la période entre 945-963," Σύμμεικτα 3 (1979): 91-92 (section 3), 103; and Laiou's comments in "Law, justice, and historians": 166-168. To this record of abuse of office by military officials during the reign of Romanos Lekape-

A last piece of evidence for the date lies in the decree's allusion to another recent event, this time to "the multitude of people returning to their patrimonial soil" (section III.1), by which Constantine refers to the large exchange of prisoners arranged with the Arabs in October of 946.[2] This event forms a *terminus post quem* for the novel, which, on the evidence of the rubrics, was drafted by the *patrikios* and *quaestor* Theodore Dekapolites, and will have been issued in 947 or 948.[3]

Constantine's novel codifies, for the first time, the regulations pertaining to the soldiers' properties. The novel consists of three sections, of which the first two deal with the military lands, the third with the owners of these lands, the *stratiotai*. The first section establishes the rules governing the sale or transfer of military lands by fixing the minimum inalienable value of these holdings at four pounds of gold, a provision meant to restrict the alienation of military properties, and to define the privileged status of registered military property before the law. The same classification and restrictions applied to the *dynatoi* in earlier legislation also apply here.

The second section pronounces on the restoration of wrongly alienated military properties to their original owners or, failing them, to their relatives (eligible to the sixth degree of kinship), or to owners willing and able to fulfill the military obligations attached to the land. As a last resort, such military lands may be given to civilian occupants to maintain the tax obligations.

---

nos should be added the charge against the Domestic of the Schools John Kourkouas, accused of seizing villages and lands for himself. His dismissal from the high command should be taken as an example of the imperial government's determination to prevent the *dynatoi* from expanding their holdings and influence in newly conquered territories. Cf. *ODB* 2: 1157; *Theophanes continuatus*, p. 426[3-16], and the remarks of Howard-Johnston, "Crown lands": 85-88.

[2]*Theophanes continuatus*, pp. 442[18]–443[12]; Markopoulos, "Le témoignage du *Vaticanus gr.* 163": 91 (section 2), 102; *Byz. Arabes* II.1: 316; II.2: 157, 407.

[3]Theodore Dekapolites is named as the author of three novels issued by Constantine VII: **E**, **F**, and Constantine's second novel on gratuities: cf. Zepos, *JGR* I: 227-229. He was active during the reigns of Constantine VII and Romanos II, but little of his career is known apart from the headings of the novels and a reference in the *Peira*. He appears to have succeeded Theophilos as *patrikios* and *quaestor* as early as 947 or 948, and was promoted to *magistros* before 961, quite possibly before 959. See Svoronos, *Novelles*, pp. 105-109, 129-130; *ODB* 3: 2043; and Rodolphe Guilland, *Recherches sur les institutions byzantines* (Amsterdam and Berlin, 1967), 2: 184.

The third addresses cases in which *stratiotai* have been forced or lured into the private service of officers or other persons, presumably *dynatoi*, and have surrendered their properties in the process. To halt these abuses, the legislator imposes financial penalties on persons illegally acquiring the lands and services of *stratiotai*; it is clear from these measures that the emperor was intervening not only to protect the military lands and their holders from the encroachments of the *dynatoi*, but also to prevent the growth of private armies loyal to powerful military magnates.

The legislation on the military lands is of interest for its combination of unwritten customary law, case decisions, and the measures devised by Constantine and his commanders in response to current conditions and the aims of military policy. As the first formal codification of the laws applying to the soldiers' properties, Constantine's novel in turn served as the basis and precedent for subsequent legislation on the military lands.

TEXT Svoronos, *Novelles*, pp. 104-126 (document no. 5); Zepos, *JGR* I: 222-226.

LIT. Lemerle, *Agrarian History*, pp. 116-125; Kaplan, *Hommes et la terre*, pp. 246-251.

NOVEL OF THE SAME [CONSTANTINE VII] CONCERNING THE *STRATIOTAI*, DICTATED BY THE *PATRIKIOS* AND *QUAESTOR* THEODORE DEKAPOLITES

PROLOGUE As the head is to the body, so is the army to the state; as their condition varies, so too must the whole undergo a similar change. He who does not subject these matters to great care errs with respect to his own safety, especially if he must regard the commonwealth as his own realm of security. Since with the passage of time the properties of the *stratiotai*, whence the basis of their existence and livelihood has come, had decayed and were [on the verge of] lapsing into a worse condition, our Majesty appointed by God has restored them to a healthy and better state, bestowing common benefit to the whole of society.[4]

1.1. We therefore establish by law the same rule which until now unwritten custom has determined, that the *stratiotai* are not allowed to sell the properties by which their *strateiai* are supported, and that immovable property in the amount of four pounds of gold must be preserved in each *strateia* of cavalrymen. We rule that the sailors enlisted in the fleets of the Aegean Sea, Samos, and the *Kibyrrhaiotai*[5] should also be assessed at these rates, for they equip themselves, serve as their own oarsmen, and discharge heavy services. For the sailors serving for pay in the imperial navy and the rest of the sailors, it has for a long time now been the rule on the basis of custom that immovable property worth two pounds should be maintained in each *strateia*. This in our judgement seems sufficient.[6]

2. If those enrolled in either [type of] *strateia* possess this amount of immovable property and conserve it by keeping it unsold, and transmit it to their natural heirs by whichever legal means they choose — along with the inherent obligation, of course — whether those to whom

[4]The emperor as benefactor and healer: Hunger, *Prooimion*, pp. 123-130.

[5]Samos, Aegean Sea, and the *Kibyrrhaiotai* were maritime themes set up to defend the islands and coastlines from naval attack; the theme of the *Kibyrrhaiotai* stretched along the southwestern coast of Anatolia (see Map).

[6]These rates differ slightly from the ones given by Constantine in the *De cerimoniis*, p. 695[14-18]: "Note that a *stratiotes* in the cavalry must have immovable property, in other words, lands, worth five pounds [of gold], or at least four. Note that a *stratiotes* in the imperial navy must have immovable property, in other words, lands, worth three pounds."

they transmit are of the descending or even ascending, or lateral branch, whether the inheritance comes to some in equal parts without a will or whether legitimate or natural or unrelated civilian inheritors are fairly named in the will in unequal parts (we bar holders of dignities from these inheritances completely), we ordain that the burden of the contribution follows in proportion to the value of the inheritance.

3. We have not overly concerned ourselves about movable property, but this shall remain at the disposal of the owner unless the immovable property falls far short [of the minimum inalienable value]. For it is then necessary that the deficiency in the immovable property be made up from the movable goods on examination by a reputable man.

4. If the *stratiotes* has come into possession of so many immovable properties that he far exceeds the set amount, if all the properties are registered in the military rolls, the *stratiotes* may not sell them or a part of them, even if the remaining [property] is superior in value [to the minimum inalienable limit]. Nor may anyone purchase them, above all an illustrious man, a holder of a dignity, a metropolitan, a bishop, a monastery or any other type of pious house, or a *dynastes* down to the rank of *scholarios*, in the knowledge that [if they are found to have done so illegally] they will have no claim for a refund of the prices nor for any calculation of the expenditures even if they happen to have lavished great sums on the improvement of the lands purchased. They will nevertheless take away their materials without harming the state of things as they were before.

5. If not all the properties are registered, but the *stratiotes* has independent property not subject to the *strateia*, this he shall have the right to alienate in any way he chooses as long as the registered immovable property is sufficient to fulfill the *strateia*. If it is not sufficient, the person acquiring the property from the *stratiotes* for any reason will be obliged to make up the deficiency with immovable property.

6. If the immovable properties of the *stratiotes* are not registered at all, let the lands of better quality be allocated by tacit agreement[7] up to the value of four pounds and let them be consolidated in this privileged category by our provision. The surplus properties they are allowed to alienate. In the event that one person bought lands of better quality on an earlier occasion, and another person bought inferior lands afterwards,

[7]σιωπηρῶς: equivalent to the Latin *tacito consensu*. On σιωπηρός in the meaning of "implied" or "secret," see Avotins, *Greek of the Novels*, pp. 192-193.

if the lands of good quality are reclaimed by this privilege set out above, let the person who was first have the right of priority over the person who came afterwards.[8]

7. If *stratiotai* with many valuable immovable properties have alienated their registered property, and afterwards wish to reclaim it as registered property, support for the reclamation is to be given to them, with the proviso that a sufficient amount from the rest of their holdings is to be made over to the purchaser, as long as cavalrymen clearly possess property above the value of four pounds of gold, sailors above two. If someone is liable for a share of the *strateia*, his property is to be registered in proportion to his share.[9]

8. Military lands are not to become the property of persons who acquired them in whatever way unless the period of forty years runs its course without claim.[10] For a long time customary law has to all intents and purposes numbered these persons among those who acquired use of the land in bad faith, except insofar as some who acquired its use through a transaction have avoided financial penalty on their har-

[8]I agree with Svoronos's interpretation of this paragraph (*Novelles*, pp. 109-112). Once the unregistered lands of the *stratiotes* have been consolidated at the minimum inalienable value of four pounds of gold, they acquire retroactively the protected status of registered military lands, and thus may be reclaimed if alienated. For example, if a *stratiotes* sold land of good quality to A, and afterwards sold land of inferior quality to B, the *stratiotes* reclaiming from A the good quality land constituting his military property may use the land sold to B to compensate A, A as the first buyer having right of priority over the second buyer B. Note that the following paragraph 7 rules that *stratiotai* reclaiming registered military properties must compensate the buyers with unregistered lands.

[9]The legislator here refers to *syndotai* or "contributors," that is, persons inscribed in a share of a *strateia* who made a joint contribution to the maintenance of a *stratiotes*. See also **G**, section III.1. In the *De cerimoniis*, pp. 695^{21}–696^{1}, Constantine explains that "when they [the *stratiotai*] are very poor, contributors are given to them so that through them they will have sufficient means and carry out their respective military obligations." Cf. Lemerle, *Agrarian History*, pp. 134-135; Haldon, *Recruitment*, pp. 49-51.

[10]This is the first mention in the land legislation of the *longi temporis praescriptio*, or "possession by prescriptive right": see above, pp. 12-13. Roman and Byzantine legal texts cite varying time limits (thirty or forty years); the forty-year term given here by Constantine agrees with the term cited in the *Basilika* (5.2.14, 5.3.7) and in the *magistros* Kosmas's decision on *paroikoi* (Weiss, "Parökenrecht": 479-480). Note that the forty-year prescription applied to alienated civil and military lands alike (cf. **K**, section II.1; **O**, prologue 1), and is to be distinguished from the term of thirty years applying to abandoned properties (cf. **H**, section I.2; see also above, p. 66, n. 11).

vests, whereas others acquiring use in bad faith pay a penalty on harvests, revenues, and all damage. This is to our satisfaction.

9. We prescribe that not only are the lands of persons enrolled in the sacred legions of the *stratiotai* deemed to be military, but also the lands of persons who, found to be in penury through some cruel stroke of fortune, have after legal decision received an exemption from their military obligations. We rule that they too are to enjoy the same privileges, although we do not allow the lands by which their *strateiai* are supported to be sold by them or, *a fortiori*, by the state.[11] For if we impose a legal injunction on the owners for the sake of the common good, how could we permit the state to sell? Will we accord that long unwritten contradiction the status of law, the contradiction which had to be expunged from the whole earth and sea, most brutal and cruel as it was? For in our opinion those introducing it attributed the same instinct to the state as that of she-bears, for word has it that alone of animals she-bears oppressed by hunger chew their fingers. And a perceptive person would deem the *stratiotai* not the fingers but rather the hands of the entire state.

II.1. These matters, then, we establish for time to come, effectively and profitably in our judgement. In times past arbitrary and crude custom has long held that the purchasers of military properties are to be evicted without compensation. On the other hand, the detailed treatment of each case, modified in different ways on different occasions where the lords of the court adapted [customary law], brought great damage and complete confusion to affairs. Turning the deliberations backwards and forwards in our mind to best advantage, rejecting those confused and variable procedures, and preparing the administration of all cases in order and logic, we ordain:

[11]The *adoreia* was a temporary release from military obligations, which saw the lands of the *stratiotes* temporarily reassigned to another (even a non-stratiotic) holder to maintain their productive capacity and tax obligations: see Górecki, "*Strateia* of Constantine VII": 167-171, and Haldon, "Military service": 30-32. In the *De cerimoniis*, p. 696[1-9], Constantine described the relief offered to impoverished *stratiotai*: "When they are completely indigent and cannot support their respective military service even with the contributors given to them, they are then given an exemption and transferred to the irregulars ... the lands of these *stratiotai* remain inalienable; they are demarcated and assigned to the fisc, so that if it should happen that an exempted *stratiotes* restores his situation once again, he may recover his lands and be reinstated in his respective military service."

2. If there are heirs of these registered *stratiotai*, in the descending line perchance, or the ascending line, or the lateral line to the sixth degree, those with right of pre-emption according to the closeness of the degree are to be fully accepted in the reclamation of properties wrongly alienated by the *stratiotai* or forcibly appropriated by a *dynastes*. Should the relatives of a closer degree of kinship prove unwilling or unable, more distant relatives are to be accepted. If no relatives are available, nor those deemed related by marriage, their fellow contributors or comrades in arms who come forward are to be accepted, or in their absence, the poorer *stratiotai* of the same tax community who, having survived the plight of indigence, may build themselves back up to a state of sufficiency by means of these properties. In the absence of these persons, it is necessary to summon non-military contributors of the same tax community so that the tax does not drop from the collection.

3. If a *stratiotes* has purchased from another *stratiotes*, if a wealthy one from a poor one, he shall suffer the same penalty as the *dynatoi* and be divested of the lands purchased without compensation; if a poor from a wealthy one, he shall keep his purchase in full or take back the price. If there is poverty on both sides, we rule that support must be given to the party which came out at a loss, in adherence to the worthy principle which does not permit one person to profit at the expense of another.

III.1. Some of these measures concerning military properties we found, others we created. We deem it fitting to turn to the persons of the *stratiotai* themselves and discuss what has recently befallen them. There was a time which saw a general upheaval of affairs and an irresistible onslaught of misery, when every last one of the high and mighty in his haste to carve out unlimited lands for himself enrolled the wretched owners in a list of slaves, with nary a thought that his actions were reprehensible, but instead believing himself ill-treated if someone else seemed to surpass him in greed. It was a widespread contest of evils. Nor did the affliction come to a halt with the *dynatoi*, but starting from this point it came at last to the underlings, for the habits of the high and mighty as often as not prove contagious to the populace as a whole. And so those who received command of the army — as though there were a law that the *strategos* should be of this sort — all led the *stratiotai* hither and thither, and as they took gifts they handed out exemptions from service in return. They were venal fellows, negligent, unwarlike, baser than ants and more ravenous than wolves. Unable for

these reasons to force tribute from the enemy, they exacted money from our subjects, with the result that they needed no time to achieve complete disruption, and by their indolence they brought the Byzantine empire into the utmost peril. Many good and moderate men will applaud the amount of effort we have expended to stop these men, and still more will the multitudes returning to their patrimonial soil shout their approval now that they have been released from servitude. I believe that the improvements in other matters also attest this, changes on which we have been labouring persistently, withstanding sleep with our concerns,[12] so that the rectification of abuse which we have devised and crafted in the present edict with as much precision as possible will not prove meaningless or full of flaws. Bequeathing it to the future in perpetuity, we legislate as follows:

2. If someone is found keeping a *stratiotes* in the status of a dependent peasant [*paroikos*], if that same man has also seized the properties by which the *strateia* is maintained, he shall pay six gold *nomismata* as punishment, half of which the *stratiotes* will receive towards the resumption of his former position, while the treasury will receive half for the sake of the service of which it has been deprived. If said person is found not to have seized but to have purchased the military lands, he will pay three gold *nomismata* to the treasury, and he will have no legal claim upon the *stratiotes* for the price. If other persons have driven the *stratiotai* from their own properties, or if the *stratiotai* themselves have absconded, persons who took them in out of pity either as dependent peasants or as servants are not subject to punishment.

3. Persons who have had the audacity to take able-bodied *stratiotai* into their own service, thereby depriving the armies of them, will be compelled to pay for an exemption at a rate of six *nomismata* for each *stratiotes* for each year, which the state will appropriate, unless they happen to have obtained them from *strategoi* or from other officers, and [the *stratiotai*] were among those assigned to the service of the *strategoi* or the other officers. But if the *stratiotai* came from outside this group and are from the community, the person keeping them will not escape the law even if he is prepared to demonstrate that he has been allowed to use them by a *strategos* or an officer.

[12]The emperor's untiring vigilance and ceaseless toil: Hunger, *Prooimion*, pp. 94-100.

F

ROMANOS II CLARIFIES THE RULES ON COMPENSATION

This decree of Romanos II is a rescript drafted by the *magistros* Theodore Dekapolites. It responds to a query submitted by a provincial judge seeking guidance on the rules for repayment in cases where alienated lands have been restored to their original owners. The text has come down without a date, but the legislator's reference to a recent attack of pestilence and crop failure (section III.1) corresponds with reports in the chronicles recording the onset of these calamities in October of 960.[1] The rescript will have been issued shortly afterwards, during the year 961.

The opening remarks of Dekapolites's response indicate that the provincial judge had expressed difficulty in determining the cases to which the rules on reimbursement apply. Dekapolites uses the first section of the rescript to review the rules set out in previous enactments, with particular reliance on Constantine VII's novel of 947 (**D**). He reminds the judge that prosperous civilians and *stratiotai* recovering alienated properties have always been obliged to return the purchase price within a period of three years; but there has been one significant revision, introduced by Constantine VII (in a decree which has not survived). Persons with means of less than fifty *nomismata*, exempted from repayment from the time of the famine by the 947 law, are now compelled to reimburse the purchase price over a term extended by the late emperor from three to five years.

Dekapolites goes on to discuss cases in which the restored owners have failed to meet the terms of repayment. He advises the judge to resolve these cases either by rearranging the terms or offering creditors temporary control over the properties and usufruct. In proposing these solutions, Dekapolites adheres to the spirit of Constantine's 947 legislation in safeguarding the interests of both the "poor" and buyers who

[1]Skylitzes, pp. 251[93]–252[95]. A shortage of grain is also recorded in Constantinople at the same time: *Theophanes continuatus*, p. 479[1-11]. A letter of the *protasekretis* Symeon (see below, p. 90, n. 1), fixing a price for grain to ensure its affordability to the poor, probably refers to this situation: cf. Darrouzès, *Epistoliers*, pp. 145-146 (letter no. 82).

acted in good faith; but in the third section he takes a harder line, ruling that the reimbursement obligation will apply only to cases arising between 927 and 945. All persons seeking to regain properties alienated after Constantine's accession as sole emperor on 27 January 945 will have them restored without obligation to reimburse the buyers, who thereby suffer the consequences of ignoring the laws barring acquisitions of lands from poor persons or *stratiotai*.

TEXT Svoronos, *Novelles*, pp. 127-141 (document no. 6); Zepos, *JGR* I: 240-242.

LIT. Lemerle, *Agrarian History*, pp. 98-100; Kaplan, *Hommes et la terre*, pp. 431-433.

NOVEL OF THE EMPEROR ROMANOS THE YOUNGER, NAMELY A RESPONSE TO A QUERY FROM A THEMATIC JUDGE WHICH THE MAGISTROS THEODORE DEKAPOLITES DICTATED

1.1. Your query, blessèd lord, has been referred by imperial command to our humble person. It is our belief that you are not unaware of the force of the novels; that they have great subtlety and have often been altered according to circumstances at different times, in different ways, is evident. At no time before the date of the proclamation of our late and thrice-blessèd emperor[2] did either prosperous[3] *stratiotai* or civilians have the right to reclaim without repayment properties sold by them. *Stratiotai* with means above four pounds of gold in immovable properties and all civilians were commanded by the new imperial constitutions to restore over a period of three years the prices which they received, whereas only the more indigent *stratiotai* had the benefit of the no refund rule by imperial discretion.

2. An edict of our deceased emperor of blessèd memory, which the blessèd *patrikios* Theophilos the *quaestor* dictated,[4] came into effect, proclaiming the same validity to times previous, to wit, from the year of the famine, the point from which the novels began. It decreed that if

[2]The now deceased Constantine VII's accession as sole emperor on 27 January 945.

[3]Svoronos's emendation of εὔποροι for ἄποροι must be accepted.

[4]Constantine's novel of 947 (**D**).

a civilian did not have means of more than fifty *nomismata*, he was not to be compelled to repay the price which he had accepted.

3. Upon a petition from the officials of the provincial military administration, our blessèd emperor introduced no change except this, that these persons too were to repay the prices. For he considered it excessive and unfair that the buyer who had done nothing wrong, but had put down the price in good faith, be deprived of the price which he paid out, along with the property purchased. In full understanding of the situation, he added a statute of limitation [applicable] only to poor persons called to account, to the effect that those persons presenting claims are to recover their sold properties straightway, if they are clearly members of the village commune, and are to repay the price no longer over a term of three years but over a term of five years.[5] What they threw away and squandered through negligence and indolence, let them redeem by five years of sweat and toil, now that the emperor has induced them to the habit of hard work, I should think, with the specified period of five years.

II.1. Persons who took back their own properties without refund before the imperial decree are not to be disturbed if they have the ruling of a judge, but they are to retain these properties without confiscation. For the decision has already been referred to the law then in force, and the imperial decision which came afterwards has not instructed that what was ordained in the recent past be reëxamined. On the contrary, the imperial guardian of justice has instead expressly declared to [me] his unworthy servant that cases resolved up to that time are to remain undisturbed. If in fact poor persons have obtained a favourable judgement in any way whatsoever and reclaimed their own lands without repayment, and they furnish a written decision, let your eminence not trouble these persons.

2. If, though, in taking these back they were bound to restore the price over a set term, and the term expired, if they have given back even a small part of the price, or are collecting the money and are reported to be obtaining another fixed term to repay the price, the judge who is pleasing to God should request written pledges of security from them, which they must present to the purchasers, to the effect that they

[5]The text here refers to an extension of the time limit from three to five years made by Constantine VII in a ruling which has not come down: cf. Dölger, *Regesten*, no. 682.

will repay either the balance or the whole sum over another fixed term, whatever period you determine.

3. If they have repaid nothing at all, and especially if they made written pledges of security to the purchasers and were unable to furnish any of the price, you are either to detach the property[6] from the village commune, if you consider this more advantageous to the poor, or install the purchaser officially in these sold properties for the time being and mark off the future income from the usufruct of the lands in proportion to the amount paid by him for as long as it is necessary for these lands to be exploited, for three years perhaps, or even more, but not longer than ten; and you will arrange for both sides to present reciprocal agreements signed by their own hands — the purchasers to the villagers, the villagers to the purchasers — to the effect that once the usufruct has gone to the purchaser in place of the price over the specified term, the use of the lands will revert once again to the commune and that the poor are never to cease from ownership of them. The matter must be clear from the document and impossible to obscure through the malfeasance of any individual.

4. If the poor are able and prefer to do so, they should pay as great a part of the price as they can, and cede a portion to the purchasers over a number of years to profit from the lands bought. They must furnish as much of the price as they can and define the time limit, whereas the purchasers are allowed to profit from the use of the lands in due proportion. If, by way of example, the poor seller received one hundred *nomismata*, ten years of usufruct are assigned to the purchaser; if the poor man is able to deposit fifty *nomismata* now or later, the purchaser is allowed to harvest the lands bought for only five years.

III.1. You will endeavour to regulate these matters in this manner from the first imperial legislation until the proclamation of our late and thrice-blessèd emperor, between which are eighteen years.[7] From the time of the rule of our deceased emperor you will restore without excep-

[6]The text reads *τόπον* without the definite article; the translation follows Lemerle's tacit correction to *τὸν τόπον*, based on his argument that it is the property in question which is subtracted from the village commune so as to have the buyer and the seller come to a private agreement concerning the restitution of the purchase price.

[7]That is, between the years 927 and 945. In stating "from the first imperial legislation" Dekapolites must mean the year of the famine, the point from which the land legislation issued by Romanos Lekapenos (**C**) and Constantine VII (**D**) took effect.

tion all *stratiotai* as well as civilians to their own lands without repayment, for those persons who after so many proclamations and imperial commandments have infiltrated into the village communes and disrupted communities with greedy intent, and dared to arrange purchases from *stratiotai* or poor persons, have no excuse. Your request for a ruling revealed the pressing burden of the pestilence of late and the complete failure of the crops, and we should take care lest we impose upon the wretched poor a judge's pressure more violent than the pestilence. Just as the best doctors withhold potions during times of fever, so too must the judges set aside claims and allow a little flexibility by showing consideration for the violent distress of the time.

Gold solidus/nomisma of Romanos II

G

CONSTANTINE VII RULES ON THE RESTORATION OF MILITARY LANDS TO THE *STRATIOTAI*

The rubrics identify this text as an extract from an edict addressed to the officials in the Thrakesion theme. One tradition, generally accepted, dates the edict to March of 962, thus placing the decree within the reign of Romanos II; but another tradition, to which Burgmann has drawn attention, gives the date as March, in the second indiction, in the year 6467 (= 959), thus putting the decree eight months before Constantine VII's death on 9 November 959.[1]

There is a strong case to be made for a revised date and attribution of this decree, based on new evidence found in the epilogue (published for the first time in Svoronos's edition of the decree), in which the emperor declares his intention to set forth on a military campaign. This announcement cannot be reconciled with any intentions or undertakings traceable to Romanos VII. It can, however, be connected with a curious episode in September of 959, when the emperor Constantine travelled to the monastery at Mount Olympus in Bithynia, ostensibly to fortify himself with the monks' prayers for a campaign to Syria, but in reality to effect the deposition of the Patriarch Polyeuktes.[2] As this journey is most likely the imperial expedition to which the epilogue refers, I propose that the revised dating of the decree to March of 959 and its reascription to Constantine VII be accepted.

The epilogue's reference to "the *magistros*, so beloved to me for his arrangement of all these affairs," points to Theodore Dekapolites as the author of the decree. His elevation to the rank of *magistros* no later than

[1]Burgmann, "Editio per testamentum": 476-477.

[2]Skylitzes, pp. 246^{66}–247^{73}; this report is corroborated by a poem on the death of Constantine VII attributed to Symeon the Metaphrast (see p. 90, n. 1 below) which alludes to the emperor's journey: cf. Ihor Ševčenko, "Poems on the deaths of Leo VI and Constantine VII in the Madrid manuscript of Scylitzes," *Dumbarton Oaks Papers* 23/24 (1969/ 1970): 211 (lines 38-39, 50-52), 221.

961 is confirmed by **F**, but the evidence now indicates that this promotion had taken place in Constantine's reign.

The decree falls into three sections. The first two set forth the criteria by which to assign penalties and reimbursement when military properties revert to their original holders. The legislator rules that in cases between persons proven to have dealt fairly and in good faith, no penalties will apply and repayment will be determined according to the circumstances of the transaction and the parties involved. The third section deals with *stratiotai* who have left their lands to enter the service of others. Persons who took in indigent *stratiotai* are not to be penalised, whereas those who have forced them from their lands or have knowingly accepted solvent *stratiotai* into their own service will be fined.

TEXT Svoronos, *Novelles*, pp. 142-150 (document no. 7); Zepos, *JGR* I: 243-244.

LIT. Lemerle, *Agrarian History*, pp. 126-128; Kaplan, *Hommes et la terre*, pp. 433-434.

EXCERPTED FROM THE IMPERIAL EDICT, NAMELY THE HOLY MEMORANDUM, ADDRESSED TO THE SUBJECTS AND AUTHORITIES IN THE THRAKESION THEME, IN THE MONTH OF MARCH, IN THE SECOND INDICTION, OF THE YEAR 6467: EIGHT PARAGRAPHS IN ALL

1.1. If persons hold portions of military lands, if they acquired them in good faith, that is by way of purchase, gift, exchange, or recompense,[3] but without support from the statute of limitations, we decree that the lands alone are to be confiscated from these persons and restored to the *stratiotai* who present claims, but that no financial penalty will apply to the holder. For our Majesty has no wish that the man who acquired military lands not by seizure or force but in good faith should suffer any financial penalty apart from the restitution of the properties without

[3] ἀντιλήψεως τρόπῳ: the translation of the term ἀντίληψις by "recompense" has been guided by Svoronos's definition, "ceci fait comprendre qu'il s'agit ici de la cession d'un bien contre une aide quelconque" (*Novelles*, pp. 143-144).

refund. But if persons control military lands as a result of seizure, in that case a financial penalty corresponding to the value of the land in his possession is to be levied against the appropriator.

2. If a *stratiotes* purchased a military property from another *stratiotes*, the purchaser is not to be subject to any financial penalty since he clearly made the acquisition in good faith; but if the seller has enough for the *strateia* while the purchaser is indigent, the land reverts to the seller, the price to the purchaser. If, on the other hand, the seller is indigent, and the purchaser is a man of means, in that case the seller is to take back the lands without refund. If both parties are *stratiotai* and both are indigent, the price is to be returned to the purchaser, but with a further specification, namely, of the three-year term.

II.1. If persons have purchased military lands from an inspector or an imperial agent with proper documentation, we have declared that these lands are to revert without refund since they are military lands, unless the holders are supported by the statute of limitations; but no further financial penalty will be sought. For these persons too are bolstered by the plea of good faith.

2. But if anyone acquired lands by way of sale, gift, exchange, or recompense, and these lands happen to be military in whole or in part, and the statute of limitations is of no help to the holder, he is not to suffer financial penalty apart from the confiscation of the lands without refund, since he clearly possesses in good faith; but the penalty is to be transferred to the seller, donor, party to the exchange, or the party who benefited from the recompense. If this person is found to be possessing in good faith, he too is not to suffer financial penalty.

III.1. If any of the *stratiotai* have absconded and left the entire military property behind for the service to be rendered by their fathers or brothers and contributors, while they themselves have definitively relinquished their portion of the military land and have entered the service of other persons, the persons who took them in are not to suffer financial penalty if indeed, as stated, their *strateia* is being fulfilled by others, and the persons who took them in are found to be holding no part of the military land.

2. Furthermore, if persons took in any *stratiotai* reduced to the utmost indigence and completely unable to undertake their military obligation, but also those who had received an exemption from service, they are not to be subject to the financial penalty concerning *stratiotai*

either for the latter or the former (namely, impoverished *stratiotai* and ones with the exemption); but rather the persons who drove out the *stratiotai* and were responsible for their indigence and flight are the ones to suffer a financial penalty.

3. We ordained that a person who takes in a solvent and able-bodied *stratiotes* and knowingly detains him, and has been challenged by the *tourmarches*, or by a *droungarios*, *komes*, or *proagetes*,[4] or even by his contributor, and cannot take recourse in a plea of ignorance, is subject to financial penalty. For if able-bodied *stratiotai* are prevented from serving in campaigns, it is obvious that no small harm will be inflicted on our armies as a result.

EPILOGUE The aforesaid *magistros*, so beloved to me for his arrangement of all these affairs, has now received by our pious instruction the order that if until now he has demanded a financial penalty from the cases set forth above, from which we have written that our Majesty does not wish a penalty to be demanded, he will henceforth demand no such thing. For just as our Majesty does not wish anyone to be unjust, so in turn does he wish that no one at all should suffer injustice, but rather that all of you be glad and content. Since with the assent and help of God we are venturing forth on campaign, you are to be ready and make your preparations so that you may eagerly venture forth with and accompany your emperor and Majesty on campaign.

[4]The *tourmarches* supervised civil and military matters in a *tourma*, a subdivision of a theme (each theme normally had three *tourmai*); the *droungarios* and *komes* were subordinates of the *tourmarches* and commanded units called *banda*, which were subdivisions of a *tourma* (cf. Oikonomides, *Listes*, p. 341). The *proagetes* (a military official mentioned in the *De cerimoniis*, pp. 663[16, 20], 664[1]) seems to have held responsibilities concerning the enrolment and mustering of soldiers. Note too that this section of the decree refers to the transgressions and fines listed at the end of Constantine VII's decree on the military properties (E, section III.3).

H

NIKEPHOROS PHOKAS RULES ON LAND CLAIMS AND HOMICIDE IN THE ARMENIAN THEMES

This decree stands apart from the rest of the collection in that it applies not to the interior themes of the empire, but to the small districts along the eastern frontiers, known as the "Armenian themes" after their predominantly Armenian population. First attested in the 950's, the Armenian themes multiplied along the eastern frontiers as the Byzantines consolidated their hold over newly conquered towns and territories by expelling the Muslim inhabitants and importing Christian Armenian and Syrian settlers to replace them.[1] As this decree and other sources indicate, the Armenians were installed as *stratiotai* in the frontier zones where they furnished a plentiful supply of infantrymen for Byzantine armies during the tenth and eleventh centuries.[2]

The use of the second person identifies the decree as a rescript addressed to an official in the Armenian themes. Its provisions bear witness to the lawlessness in the frontier zones and the difficulties in maintaining order among resettled populations with a tendency to roam and desert to the enemy. To control the exasperating "instability and wandering" of Armenian *stratiotai*, the legislator imposes an extraordinary measure reducing the time limit for claims on abandoned lands from

[1]On the creation and structure of the Armenian themes, see Nicolas Oikonomides, "L'organisation de la frontière orientale de Byzance aux X^{e}-XI^{e} siècles et le taktikon de l'Escorial," in *Documents et études sur les institutions de Byzance (VII^{e}-XV^{e} s.)* (London, 1976), no. XXIV, and idem, *Listes*, pp. 344-363. The influx of Christian Armenian and Syriac settlers is discussed by Gilbert Dagron, "Minorités ethniques et religieuses dans l'Orient byzantin à la fin du X^{e} et au XI^{e} siècle: l'immigration syrienne," *Travaux et Mémoires* 6 (1976): 177-216; and on the place of Armenians in Byzantine society, see now Nina Garsoïan, "The problem of Armenian integration into the Byzantine Empire," in *Studies on the Internal Diaspora of the Byzantine Empire*, ed. Hélène Ahrweiler and Angeliki E. Laiou (Washington, D.C., 1998), pp. 53-124.

[2]Eric McGeer, "The legal decree of Nikephoros II Phokas concerning Armenian *stratiotai*," in *Peace and War in Byzantium. Essays in Honor of George T. Dennis, S.J.*, ed. Timothy S. Miller and John W. Nesbitt (Washington, D.C., 1995), pp. 123-137.

thirty to three years, and restricts or nullifies transactions in military lands in an effort to keep these properties in the hands of the *stratiotai*. What emerges from the first section of the decree, however, is the discretion of Byzantine justice in the Armenian themes, most evident in the ruling that Armenian deserters returning from Muslim Syria must forfeit their lands as punishment while receiving new properties as a means of support. This surprising lenience reveals the compromises necessary to the Byzantine resettlement policy and the limits of Byzantine authority in the frontier zones. Just as the need for Christian immigrants forced the Byzantines to tolerate the presence of heterodox churches (Syrian Jacobites and Nestorians, non-Chalcedonian Armenians) within the Orthodox realm, so too did the demand for Armenian soldiers compel them to apply the law firmly, but not so harshly as to disaffect the imported military settlers.

The second section forbids the award of military lands as compensation to the families of murdered persons. To be noted here is the legislator's reliance on Constantine VII's novel on homicide,[3] which ruled that a portion of the murderer's possessions be awarded to the victim's family in compensation, while insisting that the lands to which the *strateia* is attached be transferred to the murderer's heirs or to someone else willing to assume the military obligations.

TEXT Svoronos, *Novelles*, pp. 162-173 (document no. 9); Zepos, *JGR* I: 247-248.

LIT. Lemerle, *Agrarian History*, p. 128.

NOVEL OF THE SAME [NIKEPHOROS] IN RESPONSE TO A PETITION CONCERNING ARMENIANS AND OTHERS, AND PERSONS WHO COMMIT THE CRIME OF MURDER

1.1. We decree that if Armenian *stratiotai* have gone off and spent a period of three years elsewhere, and afterwards upon their return discover that their properties have been granted either to refugees,[4] to other *stratiotai* for courage in battle, or else have been offered to officers of the

[3]Zepos, *JGR* I: 233-235; see also Ruth Macrides, "Killing, asylum, and the law in Byzantium," *Speculum* 68 (1988): 510-512.

[4]These will have included exchanged prisoners of war and Christian inhabitants of Muslim lands fleeing anti-Christian outbreaks provoked by the Byzantine conquests in the east.

themes or *tagmata*, or to valiant *strategoi*,[5] or even to others because of public service, the Armenian *stratiotai* who return after three years are not to claim and recover these properties. For the instability and wandering of the Armenians will not be corrected unless by such legislation; were it in their power to go off to parts elsewhere and change dwelling, and come back once more to acquire their properties without hindrance, all the Armenian themes would disappear. It is necessary instead, just as described, to present the properties of absconded Armenians — if a three-year period has elapsed and they have not returned — to refugees, as noted, or to give them as a reward to valorous *stratiotai*.

2. But if some of these Armenian properties have been donated to the imperial monastery of Lakape,[6] as you have written, or assigned to curatories of any kind,[7] or bestowed to one of the *dynatoi* not because of public service but as a favour only, the heirs to these properties may reclaim their own lands not only if they return after three years have gone by, but also before the passage of thirty years. Even if persons who have received these properties as a favour produce the inspectors' certificates or chrysobulls, we rule that all this counts for nothing.[8] It is our wish that the heirs of the *stratiotai* take back their own properties.

3. If lands were given in exchange by some persons or by the *stratiotai*, the *stratiotai* must reclaim what is theirs, whereas the others must come forward and present their claims, and seek back what they gave. If [the persons giving up the properties] have made improvements to these properties and these are of practical use, such as the cultivation of

[5]Referring to the "lesser" *strategoi* of the Armenian themes, to be distinguished from the regular *strategoi* of the Byzantine themes: cf. Oikonomides, *Listes*, pp. 345-346.

[6]The village of Lakape, birthplace of the emperor Romanos Lekapenos, lay between Melitene and Samosata. Cf. Henri Grégoire, "Le lieu de naissance de Romain Lécapène et de Digénis Acritas," *Byzantion* 8 (1933): 572-574.

[7]Curatories (*kouratoreiai*): districts or estates worked under imperial supervision for the profit of the crown. Cf. *ODB* 2: 1156; Howard-Johnston, "Crown lands": 85-97.

[8]Phokas's citation of the thirty-year term indicates that he treated these properties as abandoned lands, not as alienated military lands subject to the forty-year prescription set in Constantine's decree (**E**, section I.8). The taint of corruption is evident here, as the passage implies that the *dynatoi* have connived with officials in the Armenian themes to cover their acquisitions of abandoned properties (given to them as "favours") with the veneer of legality. Phokas's rejection of their certificates anticipates Basil II's distrust of land surveyors and his abrogation of deeds not confirmed by his own hand (cf. **O**, sections II.1, VI.2).

vineyards, or the construction of millsites, barns, or other plain buildings built not for embellishment but in keeping with the modest means of the *stratiotai*, then the persons reclaiming their properties must offer the corresponding prices for these improvements. If, on the other hand, they were built for sake of embellishment alone and serve no practical use, the builders must depart, taking with them only the materials of these constructions.[9]

4. As for those Armenians who deserted to Syria, those who return not just before the passage of three years, but even before one year, must not receive their properties back, but are to relinquish ownership of them and accept this by way of punishment. It is necessary, however, to see to their welfare upon their return by providing them with other properties.

II.1. As to those who commit the crime of murder, you must submit the perpetrator of this bloody crime to the penalty of the law; but you must not award the land of his *strateia* as compensation to the children or kinsmen of the slain man. You must compensate them with movable goods, and keep the immovable property intact for the maintenance of the *strateia*. If there are no movable goods, you must enjoin the descendants of the murderer to make satisfactory compensation to the heirs of the slain man, but you must not allow the lands of his *strateia* to be sold. If all the members of his household share in this foul crime of murder, they must each suffer the penalties conforming to the law. The lands of his *strateia*, as made clear so often, are not to be transferred elsewhere, but if there is no heir left willing to undertake the *strateia*, anyone else receiving the lands must assume responsibility for this.[10]

[9]The epitome of this decree here adds "with the original structure remaining unharmed." Cf. the stipulations in Constantine VII's decree of 947 (**D**, section III.2) allowing buyers in good faith to recover the costs and materials of buildings and improvements.

[10]Cf. Zepos, *JGR* I: 234[31]-235[3]: "the lands of the *strateia*, in other words, the sources of support for fulfilling military obligations, are to be transferred to his heirs, but if the killer has no heirs, other persons acquiring the lands of the *strateia* are to assume the military obligation." It is clear from the rulings in these decrees that the *strateia* was by now attached not to the person of the *stratiotes* but to the military properties, a point rightly emphasized by Haldon, "Military service": 34-36.

J

NIKEPHOROS PHOKAS RESTRICTS THE GROWTH OF MONASTERIES

Nikephoros Phokas's famous novel on the monasteries, drafted by the *patrikios* and *protasekretis* Symeon and issued in 964,[1] combines an appeal for renewed devotion to the monastic ideals of poverty and solitude, exemplified by the strict asceticism of the desert fathers, with measures restricting the donation of land to churches, monasteries, or pious foundations. The first element expresses the famously ascetic emperor's own beliefs, but the second is by no means unique to Phokas, as both Romanos Lekapenos before him and Basil II after him likewise attempted to check the growth of monastic and ecclesiastical lands. The strongly spiritual argument in justification of his measures limiting the expansion or endowment of these institutions sharply distinguishes Phokas's legislation from that of the other two emperors.

[1]Morris, "Nikephoros Phokas": 100-106, discusses the context of the decree and posits a date after May of 964. For full discussions of the decree's place in the history of Byzantine monasticism, see Morris, *Monks and Laymen*, pp. 166-199, and Thomas, *Private Religious Foundations*, pp. 149-157.

The *protasekretis* Symeon, named as the author of the decree, cannot be precisely identified, since several Symeons are attested in the tenth century. He may have been Symeon the Logothete, known as the author of a historical chronicle covering the years between 813 and 948 (cf. *ODB* 3: 1982-1983); but the weight of the evidence points to Symeon the Metaphrast, who enjoyed a long and successful career as an imperial administrator. He is mentioned as *patrikios* and *protasekretis* during the reigns of Romanos II and Nikephoros Phokas, and thus may be the Symeon who drafted Romanos's novel on the penalties for breach of contract (Zepos, *JGR* I: 244-246), as well as the two novels **J** and **K** ascribed to Phokas. He also issued correspondence in Phokas's name (cf. Darrouzès, *Epistoliers*, pp. 33-34, and Symeon's letters, nos. 83, 86, 88, 99-108). Symeon later rose to *magistros* and Logothete of the Drome during the reign of John Tzimiskes, and earned a reputation as a poet and redactor of hagiographic texts. See Ševčenko, "Poems on the deaths of Leo VI and Constantine VII": 215-220; Svoronos, *Novelles*, pp. 153-154; Guilland, *Recherches*, 2: 194; Hans-Georg Beck, *Kirche und theologische Literatur im byzantinischen Reich* (Munich, 1959), pp. 570-572; *ODB* 3: 1983-1984.

Phrased in the moralising tones of a homily,[2] the prologue takes up nearly two thirds of the text of the novel and bears directly on the restrictions introduced. To reinforce the moral argument, the legislator liberally sprinkles the text with Scriptural citations supporting the virtues of poverty and self-denial that form the basis of monastic life. It is interesting to observe that Phokas not only forbids the endowment of new monasteries but also limits the choice of monastic vocation by making an exception for the foundation of lavriote, or semi-solitary, communities, the spiritual life practised by his uncle, the monk and holy man Michael Maleïnos who had founded a hermitage on Mount Kyminas.[3] Persons wishing to found this kind of solitary cell or hermitage in remote areas are encouraged to do so, with the proviso that these modest foundations remain confined to their enclosures.

TEXT Svoronos, *Novelles*, pp. 151-161 (document no. 8); Zepos, *JGR* I: 249-252.[4]

LIT. Lemerle, *Agrarian History*, pp. 109-110.

[2]Cf. Hunger, *Prooimion*, pp. 167-173.

[3]Cf. Morris, "Nikephoros Phokas": 101-106, and Angeliki Laiou, "The general and the saint: Michael Maleinos and Nikephoros Phokas." In *Εὐψυχία. Mélanges offerts à Helene Ahrweiler*, ed. Michel Balard, Joelle Beaucamp, Jean-Claude Cheynet, Catherine Jolivet-Levy, Michel Kaplan, Bernadette Martin-Hisard, Paul Pages, Catherine Piganiol, Jean-Pierre Sodini, (Paris: 1998) 2: 399-412.

[4]The decree has also been translated by Peter Charanis, "The monastic properties and the state in the Byzantine Empire," *Dumbarton Oaks Papers* 4 (1948): 56-58.

NOVEL OF THE EMPEROR NIKEPHOROS WHICH THE *PATRIKIOS* AND *PROTASEKRETIS* SYMEON DICTATED IN THE FIRST YEAR OF HIS REIGN, NAMELY IN THE SEVENTH INDICTION IN THE YEAR 6472, THAT THERE SHOULD BE NO NEW MONASTERIES AND HOSTELS FOR THE AGED, NOR SHOULD THE PIOUS FOUNDATIONS INCREASE AT ALL IN SIZE BY MEANS OF LANDED PROPERTIES

PROLOGUE 1. The Word of God the Father, devoting great care to our salvation, and showing how it will come to us, and how we in our abstinence from certain practices and adherence to others are to attain it, has shown right well that wealth and the acquisition of many possessions are an obstacle to [salvation]. Scripture has shown that entry into the Kingdom will be hard for the wealthy,[5] and wishes us to be so frugal that it forbids us not only a second staff, purse, and cloak, but also, I say, even the very thought of food for the morrow.[6] But now as I behold the evident disease of the monasteries and even the pious foundations (for a disease is what I call this insatiety), I know not what remedy I shall devise, or how I shall restrain their immoderation. Which of the Fathers are they obeying, from which source are they drawing inspiration, that they have been led to such great excess and false frenzies (to speak in the words of the holy David)[7]? The hours upon hours they hasten to acquire thousands of acres of land, lavish buildings, herds of horses, cattle, camels, and other beasts beyond counting, stretching the whole concern of their soul to embrace these things, with the result that monastic practices are in no way different from worldly life, bloated with cares. Indeed, the holy sayings tell us the opposite of these things, bidding us to be completely free from such concerns (for it says, "take no thought for your life, what ye shall eat or what ye shall drink")[8] and presenting the birds' freedom from care in reproach to us.[9] What does the holy Apostle say? "That these my hands have ministered unto my necessities and to them that were with me,"[10] and "having food and

[5]Matthew 19: 23-24; Mark 10: 23-25; Luke 18: 23-24.
[6]Luke 12: 22-31.
[7]Psalms 39 (40): 4.
[8]Matthew 6: 25; Luke 12: 22.
[9]Matthew 6: 26; Luke 12: 24.
[10]Acts 20: 34.

raiment let us be therewith content."[11] Look with me into the life of the holy Fathers, by whom I mean those who flourished in Egypt, Palestine, and Alexandria, and many other places on earth, and you will discover that it was so austere, so simple, that they seemed to be living virtually in soul alone, verging upon the immaterial being of the angels. Above all, in the words of Christ, "the Kingdom of Heaven suffereth violence and the violent take it by force,"[12] and we must enter into it through much tribulation,[13] yet when I see those who promise to enter monastic life and by the change of garment make their pledge to this way of life, dreadfully belying their vow and contradicting their garment, I cannot refrain from calling this a deception verging directly, I daresay, on blasphemy against the name of Christ. Since the law of neither the Apostles nor the Fathers prescribes the acquisition of a great many fields and villages, or the multitude of such excessive cares concerning the production of the harvests (and how can it be otherwise? if indeed it was their desire to act and teach in harmony with the commandments of Christ, Christ's commandment is not the acquisition of material goods, but rather the very opposite, the distribution of these things, if you will, His "sell thy goods to give to the poor"),[14] it is obvious that these pursuits are not [intended] for a virtuous and scrupulous conduct of life, but for the needs of the body instead, while the more spiritual aspects yield, sad to say, to the more worldly.

2. Need in the course of time leads to immoderation, just as evil tends to grow very large from small yet successful beginnings. What, then, is the matter with the people who have been inspired to embark on the service of God, a remedy and release from sins, that they disregard Christ's commandment, so simple and free from cares, which enjoins them to sell their goods to give to the poor? But wishing to make this difficult and more laborious, and deciding to accumulate a multitude of cares, they exert themselves in establishing monasteries, hostels, and homes for the agèd. The establishment of these institutions in earlier times, when there was still a lack of them, was very praiseworthy and most useful. For how can the good work of the founders of these institu-

[11]I Timothy 6: 8.
[12]Matthew 11: 12.
[13]Acts 14: 22.
[14]Matthew 19: 23; Mark 10: 24; Luke 18: 23.

tions not be more enduring, founders who exerted themselves in both nourishing and tending to the bodies of men, while others exerted themselves in the care of the soul and the conduct of a higher life? But ever since, these institutions have far surpassed need and reason, and there is still disregard and avoidance of the good so easily achieved, and an occupation with establishing the said institutions. How could one think that this good is unmingled with evil, and not say that the tares have been mixed with the wheat?[15] What is more, how could one deny that piety is becoming a façade for vainglory, so that those who do good are visible to all, to the point that they are not content if they have contemporary witnesses to the virtue they pursue, but wish that this not be unknown to future generations?[16] And who are the ones doing these things? Christians, alas, who have been commanded to avoid calling attention to themselves in any way in the performance of good deeds. How could one not deem [such behaviour] ostentatious, taken to be far in excess [of what is necessary], when there are other monasteries[17] which have sunk into ruin through the passage of time and require much labour and assistance, while we, neglecting to spend money readily to repair and restore them, bring great effort to bear on creating our own, so that not only may we enjoy a reputation for a new monastery, but that our monastery may also stand out clearly and be set apart so as to give our names to the lands, to speak according to the holy Prophet.[18]

1.1. For this reason, urging you to put Christ's commandments into practice, wishing to eradicate the evil of this vanity hateful to God, and endeavouring, if we do good, to do it for God alone and not to link human complaisance with this, lest we completely forsake the recompense which comes from Him (for the Holy Word says that such people already have their reward),[19] we command persons wishing to be pious and undertake good deeds and works of charity to proceed in accordance with the commandment of Christ by selling their goods to give to the poor.[20] For He wishes us to be so excessive and prodigal where mercy

[15]Matthew 13: 24-30; 36-43.

[16]The passage recalls Jesus's rebuke of ostentatious piety and prayer: cf. Matthew 6: 1-6; 16-18.

[17]Reading *μοναστηρίων* for *μυρίων*.

[18]Psalms 48 (49): 11.

[19]Matthew 6: 2; 5; 16.

[20]Matthew 19: 21; Mark 10: 21; Luke 18: 22.

is concerned that we not only distribute the money we have to the needy, but also, once we have disposed of that, go on readily to sell our possessions.

2. If some persons are so virtuous and munificent (for this is how we describe their generosity) that they wish to establish monasteries, hospices, or homes for the agèd, no one is about to prevent this. But since many of the institutions founded long ago have already gone to ruin, as previously stated, and have practically ceased to exist, let such persons attend to these foundations, let them apply their labour to what remains, and let them show their love of God on behalf [of these foundations]. As long as they ignore previously existing institutions in this condition, closing their eyes to them, as it were, and, to speak in the words of the Evangelist, "passing by on the other side,"[21] and exert themselves in the construction of other new ones, this activity I will neither praise nor, indeed, allow to happen at all, as I look upon and define this [behaviour] as nothing else but love of vainglory and a frenzy [to indulge] this.

3. It is our command that such persons attend to the already established institutions in need of assistance without providing them with fields or any properties or buildings (for what there is already is enough, what they happen to have had from the beginning); but the institutions which are neglected and lie idle and unworked for lack of means, let [the benefactors] deem these worthy of the requisite care by selling the fields and properties which [the benefactors] own to the laymen of their choice and by providing the institutions with slaves, cattle, flocks of sheep, and any number of other animals. For if we were to provide [these institutions] with the fields and properties we have, we would be in the same position as before, since the law prohibits the monasteries and churches from selling [their lands], and we would leave the ones in poor condition and difficulty unaided, since there is no money, and the hands to do the work have neither the supervision[22] nor the wherewithal.

4. Therefore, from now on, no one is allowed to transfer fields and properties in any way to monasteries, homes for the agèd, or hostels, nor to metropolitans or bishops, for this does them no good. If some of the pious houses or monasteries already in existence received such inef-

[21]Luke 10: 31; 32.

[22]Reading *προεστηκότων* for *προσηκόντων*.

ficient direction and care as to be left without properties, the acquisition of properties sufficient for them will not be prohibited, subject to the judgement and examination of the emperor. Nor, so much as we deem it an activity for praise, do we stop those who wish to found cells or the so-called *lavrae* in deserted regions as long as they do not encroach upon properties or other settlements but stay confined within their respective enclosure only.

EPILOGUE In issuing these recommendations and rules, I know that I seem to be saying things burdensome to many people and at variance with their opinion. But this is of no concern to me, since, in the words of Paul, I wish to please not men but Christ.[23] To people with sense and faculties, accustomed to seeing things not superficially, so that a simple occurrence brings confusion to their way of thinking, but who go further and are able to peer into the depth of things, we will appear to be expressing what is both profitable and beneficial both to those who live according to God and to the entire commonwealth.

Gold solidus/nomisma of Nikephoros Phokas

[23]Galatians 1:10.

K

NIKEPHOROS PHOKAS CURTAILS THE RIGHTS OF PURCHASE OF THE POWERFUL

The attribution of this novel to Nikephoros Phokas is confirmed by the reference in the prologue to the tenth indiction, conforming to the year between 1 September 966 to 31 August 967 and anchoring the decree securely within Phokas's reign.[1] The once standard interpretation of this law as a concession by Phokas to the interests of the *dynatoi*, however, has since given way to the opposite view developed by Lemerle, whose analysis drew the necessary distinction between the arguments of the *dynatoi* rehearsed in the prologue and the measures introduced by Phokas in response. There is an ironic twist to the manner in which the emperor uses the grievances of the *dynatoi* as the basis for his rulings.

The novel at first implies that the complaints of the *dynatoi* have met with a sympathetic ear. The prologue, proclaiming the emperor's sacred duty to deal impartially and equally with all his subjects, issues a veiled rejoinder to Romanos Lekapenos's assertion in **C** of the emperor's mission to side with the poor and oppressed. Phokas thus concedes the point to the *dynatoi* that previous land legislation has discriminated against them, and, in adherence to the principle of equal justice for all, he proceeds to amend two rules held to favour the poor over the powerful.

The first concerns the right of pre-emption. While Phokas upholds the general restrictions barring the *dynatoi* from acquiring land from poor persons or *stratiotai*, he declares that previous emperors have

[1]The reference to the forty-year prescription in the decree's second section has led some scholars to question this date, as they have assumed that the forty-year term begins with the year of the famine (927-928) and would not have expired by the date recorded in Phokas's decree. The forty-year term has no bearing on the date, however, since Romanos Lekapenos set no such limit on claims from the time of the famine (the forty-year term is first cited in Constantine VII's novel on the military lands: **E**, section 1.8). What should be noted here instead is that poor persons have apparently been using the term to make claims on property alienated before the year of the famine, which the land legislation had set as the boundary between legal (i.e. pre-famine) and illegal (i.e. post-famine) land acquisitions by the *dynatoi*.

gone too far in granting the poor right of first refusal in sales of land by *dynatoi* with whom they share land owned in common or joint tax obligations. No known law explicitly states this, although Constantine VII's novel of 947 did grant peasants in common ownership with a powerful person right of pre-emption if the *dynatos* planned to alienate his property (cf. **D**, section IV.2).[2] Lemerle is undoubtedly correct in seeing a broad principle, rather than a specific law, at stake here: the general ban against acquisitions of property by the *dynatoi* from the poor, imposed by Romanos Lekapenos in **C** (section I.2), has been applied against *dynatoi* who, as associates of poor persons or members of the same tax district, are eligible under the law of pre-emption to acquire lands put up for sale. Phokas therefore withdraws this right of pre-emption from the poor, and rules that henceforth powerful persons may acquire land from the powerful only, the poor and *stratiotai* likewise from each other only. Furthermore, declares the emperor, in the interest of fairness to all, just as the poor will no longer enjoy right of pre-emption in alienations of land by the *dynatoi*, neither will the *dynatoi* be entitled to invoke joint ownership or tax obligations to exercise right of pre-emption in alienations by the poor.

This amendment, purportedly issued to free the *dynatoi* from an unfair rule, in effect shrinks their right of first refusal in village communes where they are recognised as members and not barred as outsiders, while at the same time reducing the number of persons eligible to make transactions with them. Included with these restrictions is the stipulation that *dynatoi* who exploit their poor neighbours will forfeit all their properties by way of punishment.

The second section deals with possession by prescriptive right. Romanos's law of 934 had allowed poor persons to sue for the recovery of their properties alienated from the year of the famine (**C**, section II.1-3). It would appear, however, that a number of *stratiotai* and civilians have laid claim to properties alienated to *dynatoi* by invoking the forty-year statute of limitations, set by Constantine VII in **E** (section I.8), which has enabled them to sue for properties alienated before the famine. The legislator therefore renders the forty-year term inoperable in fair transactions made before the famine, thus assuring the owners of uncontested

[2]ἐξ ἀνακοινώσεως: on ἀνακοίνωσις, "participation" or "joint ownership," see Dölger's comments, cited on p. 66, n. 9 above.

possession of their properties, but warns that the term will still apply to unfair or forced alienations.[3]

TEXT Svoronos, *Novelles*, pp. 177-181 (document no. 11); Zepos, *JGR* I: 253-255.

LIT. Lemerle, *Agrarian History*, pp. 100-103; Kaplan, *Hommes et la terre*, pp. 434-435.

NOVEL OF THE EMPEROR NIKEPHOROS, WHICH THE *PATRIKIOS* AND *PROTASEKRETIS* SYMEON DICTATED, ON THE RIGHT OF PRE-EMPTION OF THE POOR OVER THE DYNATOI IN THE PURCHASE OF PROPERTIES SOLD BY THE DYNATOI

PROLOGUE 1. A just father who tends to all his children in equal measure, a scale of justice, a straight line and an accurate measuring rod, the Lord our God, unbiased, honoured not for inequity but for the care He exercises for all alike, created heaven and earth and the things contained therein for the sake of all. Accordingly, it is incumbent upon those to whom the rulership has fallen to follow His example all the more,[4] both to preserve equality among all those under their power and to see to the welfare of all in common, since they have been called by the lawgivers of old legal authorities and a blessing common and equitable.[5]

2. Therefore, when because of the hardship then prevailing, the emperors our predecessors issued legislation — forbidding the *dynatoi* to purchase the properties of both the poor and the *stratiotai*, as they were right to do, they made an addition to this, that the poor were also to

[3]This measure cannot have offered much comfort to the *dynatoi*, as the *longissimi temporis praescriptio* assumed ownership in bad faith on the part of the holder (a point reiterated by Constantine VII in E, section I.8). The proviso that acquisitions in bad faith remain open to challenge left the *dynatoi* who acquired property before the famine just as vulnerable as they were before.

[4]The emperor acting in imitation of God: Hunger, *Prooimion*, pp. 58-63, 203-208.

[5]An echo of the ninth-century *Epanagoge* I.1: "The emperor is a legal authority, a blessing common to all his subjects, who neither punishes in antipathy nor rewards in partiality, but behaves like an umpire making awards in a game." Translated by Ernest Barker, *Social and Political Thought in Byzantium, from Justinian I to the last Palaeologus* (Oxford, 1957), p. 89.

receive right of pre-emption on the properties of the *dynatoi*, not only by reason of common ownership, but also of joint tax obligation, and they completely excluded persons increasing in wealth day by day, denying them any sort of opening to make an acquisition, but rather, once having caused formerly prosperous persons also to live in hardship and penury as a result of granting the poor the right of pre-emption in purchases, they gave no thought at all to their welfare, and hence, one might go so far as to say, they did not allow them to remain in possession of their own property — they seemed biased and as a result of this pronouncement they annihilated and destroyed the whole of Byzantine power. Nor did their undertaking prove to be wholly effective by reason of its impossibility. Our sovereign power, striving to apportion[6] and preserve legislation fair to all, has in the tenth indiction promulgated in clear terms the law to be stated below, which does not completely nullify the legislation, but instead brings consistency to it, as follows:

I.1. We ordain that the legislation issued by the preceding emperors is to remain in effect and we confirm it in all matters, save that in this respect alone we command that it be invalid, so as the poor do not enjoy the right of pre-emption in the sale of a *dynatos*'s property either by a plea of joint tax obligation or joint ownership, even if they are found to be either *stratiotai* or civilians. We command that a person of official rank is to take ownership of it once more, that is to say, a person who appears to be to the relief and benefit of the poor adjacent to it, whereas someone who after taking possession of the property is perceived to do harm to the neighbours is to be expelled as a violent and wicked person not only from his acquisition but also from his patrimonial possessions. It is our wish that *dynatoi* purchase from *dynatoi* only, the *stratiotai* and the poor from persons who have attained the same status as they have. Just as we have prevented these persons from purchasing the properties of the *dynatoi*, so in turn do we bar the *dynatoi* from making purchases from the poor or from indigent *stratiotai*, nor are they to cite joint tax obligation or joint ownership in justification, as we are making the legislation fair to all, and do not show greater concern for some and less for others.

II.1. Whereas the passage of forty years without challenge and without appeal has confirmed the right of possession to holders of

[6]Reading διανέμειν for διαμένειν.

properties acquired from the *stratiotai*, the interruption of the term by appeals and its recommencement have weighed even upon persons who made acquisitions before the famine,[7] and while in effect has often caused them to be deprived of their properties indiscriminately, we rule that persons found to have made an acquisition from *stratiotai* and civilians in good faith before the time of the hardship are to carry on in security, and that the term of forty years recommencing in this way on appeal will have no force in these cases. Nor is their ownership to be disturbed or transferred at all — except for those persons who made their acquisitions by seizure, unjust appropriation, or in bad faith, as they pounced on the possessions of others and sought to gain even more at no cost — owing to the existence at that time of an old law which advocated the purchase,[8] and which was subsequently rescinded and overturned by the legislation issued in response to the hardship.

[7]Once interrupted by a claim or an appeal, the forty-year term started anew (*ἀναποδίζουσα*). For example, a person who acquired a property in the year 924 would assume undisputed ownership in 964; but if someone lodged a claim in 935, the forty-year term would recommence from that date, forcing the holder of the property (or his descendants) to wait until 975 before he (or they) assumed undisputed ownership.

[8]Perhaps the "old law" of Theodosius, to which Romanos Lekapenos alludes in the preface of **B**: see n. p. 40, n. 6 above.

L

NIKEPHOROS PHOKAS RULES ON COMPENSATION TO THE POWERFUL

This short decree has come down as a separate piece among the novels of Nikephoros Phokas. Opinions vary as to the definition of the text, which some scholars see as an epitome of an imperial rescript, others as a clause of the preceding novel **K**.[1] The evidence for either view is inconclusive, and no precise date for the decree can be established.

The ruling given by the decree requires explanation. The legislator states that *dynatoi* who have inherited property in village communes have subsequently bought small plots of land, where they have put up expensive mansions. Although powerful persons may inherit land in village communes, they are not allowed to extend these holdings, and must therefore restore the lands purchased to the original owners. Upon eviction, however, they are entitled either to demand payment for buildings and improvements or to remove the materials used for their construction.[2] Since the returning owners are likely poor and hence unable or unwilling to pay for the lavish dwellings, the departing *dynatoi* have little choice but to tear down the splendid buildings and take away the materials. The legislator rules that the demolition of these mansions is unwarranted, given the small parcels of land in question, and proposes another solution. To keep the lands and the improvements, the *dynatoi* may offer the former owners double the purchase price or land twice the value and size of the properties purchased.

As with **K**, Lemerle rightly cautioned against interpreting this ruling as a concession by Phokas to the *dynatoi*. True, the emperor offers them a way to retain illegally acquired properties and conserve their investments, but he does so at a steep price. Is it not better to see the choice between losing the lands and improvements, or offering double the pur-

[1]In support of this hypothesis I note that the opening word of **L**, ἐπειδήπερ, seems to follow upon the ἐπειδή introducing the second clause of **K**.

[2]In accordance with the rules stated in **C**, section II.2.

chase price or double the amount of land, as a punishment to *dynatoi* who have wrongly attempted to increase their holdings, and as a deterrent to others contemplating the same steps?

TEXT Svoronos, *Novelles*, pp. 182-184 (document no. 12); Zepos, *JGR* I: 255.

LIT. Lemerle, *Agrarian History*, p. 103; Kaplan, *Hommes et la terre*, pp. 435-436.

NOVEL FOUR OF NIKEPHOROS ON BUILDINGS

Inasmuch as a number of those persons prohibited by the novels from buying lands and expanding happen to have acquired property through patrimonial inheritance in villages and hamlets, and have subsequently purchased from their communal neighbours a few small parcels of land where, at great expense for their construction, they have put up costly mansions of enormous size, we deem it unnecessary for the sake of these few small parcels of land to demolish the immense and costly houses built upon them. Instead, the sellers (if they are still among the living or, if they are no more, their heirs or co-heirs) should accept in return for the properties sold twice the amount of the purchase price or land double the value and size of the properties sold, while the purchasers are not to be deprived of their respective improvements.

M

NIKEPHOROS PHOKAS RAISES THE MINIMUM INALIENABLE VALUE OF MILITARY LANDS

This decree, a rescript ascribed to the emperor Nikephoros Phokas, is not included with the novels preserved in the appendices of the *Synopsis basilicorum major*. The text was published in 1596 from an unidentified manuscript by Leunclavius, whose text was reproduced by subsequent editors (including Svoronos); but it also survives in a sixteenth-century Vienna codex which preserves a rubric attributing the decree to "the holy emperor Nikephoros." Although the extant text appears to be an abridged version of the original document and poses problems of interpretation, there is no need to reject the decree as a forgery or assign it to another emperor. The close dependence of the rescript's rulings on the legislation of Constantine VII (**E**) and its reference to the increased use of armoured cavalry link the document inextricably to the reign of Nikephoros Phokas.[1]

Phokas addresses a problem stemming from Constantine's novel on the soldiers' properties. Constantine had ruled that registered military properties could not be alienated even if the *stratiotes* possessed properties above the minimum inalienable value of four pounds of gold (**E**, sec-

[1]As Taxiarchis Kolias argues in *Νικηφόρος Β' Φωκᾶς (963-969). Ὁ στρατηγὸς αὐτοκράτωρ καὶ τὸ μεταρρυθμιστικό του ἔργο* (Athens, 1993). He correctly identifies the problems of interpretation posed by the decree but goes too far in proposing that the text is: 1) a forgery; 2) a pastiche of unrelated parts; 3) a law issued by Nikephoros III Botaneiates (1078-1081). His main argument against the decree's authenticity, that the armoured cavalrymen mentioned in its second part do not represent an innovation of Nikephoros Phokas and cannot therefore be taken as evidence of this emperor's supposed policy of military "reform" (in which this decree would form the centrepiece), is misplaced. The decree should be understood not as a reform measure, but as an adjustment to the rules governing the alienation and recovery of military lands, first articulated in the legislation introduced by Constantine VII (**E**, **G**) and refined by his successors Romanos II (**F**) and Nikephoros II Phokas (**H**, **M**). Decisive arguments rejecting Kolias's hypotheses and confirming the decree's ascription to Phokas are given by Magdalino, "The Byzantine army and the land": 16-21.

tion I.4). *Stratiotai* who had sold surplus military lands could reclaim them automatically without having to reimburse the buyers. Although this privilege was meant to assist the *stratiotai* in regaining their military properties, it also prevented them from selling lands despite having sufficient property to support their military obligations. It would appear at the same time that the measure had proven unfair to persons who in good faith bought and worked lands found to be military, only to be compelled to return them to the original owners without receiving repayment or compensation.

In response, Phokas revises a provision in Constantine's novel. In cases prior to the present legislation, four pounds of gold will remain the minimum inalienable value of military properties. *Stratiotai* in possession of this much military property who reclaim surplus lands will recover these by preferential right, but must now make fair repayment. In introducing this requirement Phokas restricts the privilege of automatic reclamation of registered military lands without refund set forth by his predecessor. Only in cases where a *stratiotes* has sold military lands from holdings valued below four pounds of gold will the reclamation proceed automatically and without reimbursement.

For the future, Phokas sets a new minimum inalienable value of military properties, raised from four to twelve pounds of gold. Henceforth, the *stratiotai* may not alienate military lands assessed at or below this rate. They are entitled to reclaim without reimbursement any portion of their military lands assessed at or below the new limit, but must make fair payment when reclaiming alienated military lands assessed above it.

We should not read too much into this decree. Raising the minimum inalienable value to twelve pounds of gold did not triple the value of military lands, nor was this measure meant to secure higher economic or social status for the *stratiotai*. By setting the minimum inalienable value of military properties at twelve pounds of gold, Phokas intended to achieve the same purpose which Constantine had sought to achieve with the sum of four pounds: to establish a limit so high as to obviate transactions in military lands, and thus keep all registered properties, with the attendant military obligations, in the hands of the *stratiotai*.[2]

[2]A point rightly emphasized by Kaplan, *Hommes et la terre*, pp. 249-251. I agree with the first of the three explanations of the decree offered by Magdalino, that it gave the crown the opportunity to register more land as military, but to my mind his other

The promulgation of the decree should be seen in connection with the well-known passage of the chronicler John Zonaras describing Phokas's efforts to secure the resources needed to maintain his powerful, well-equipped armies featuring the heavily armoured cavalrymen mentioned in the decree's second section:

> During his reign there was no end of registrars, assessors, military officials, and those called *protonotarioi* despatched into every last region, who oppressed his subjects with all manner of evils and drove them to the extremes of poverty, sparing not even the completely indigent. These they enlisted in the service of the public post, while those formerly subject to these charges they reinscribed in the naval services. Sailors they turned into foot soldiers, those previously of this station they counted among the cavalrymen, the cavalrymen they changed into heavy cavalrymen, and they imposed a heavier burden of military obligations on each one. It seemed as though he was enrolling every last one of his subjects into military service.[3]

Constantine's novel (**E**, section I.4-7) had allowed for the possibility that *stratiotai* might hold military lands, registered and unregistered, exceeding the minimum inalienable limit, or properties not subject to the *strateia*. Zonaras's passage indicates that Phokas sought to have all the properties of the *stratiotai* registered so as to exact from them the maximum military contribution. While not necessarily linked directly to these measures, Phokas's legislation had a complementary aim: to compel *stratiotai* to retain all the lands in their possession, which could then be registered and assessed at their highest rate of military taxation and service.

TEXT Svoronos, *Novelles*, pp. 174-176 (document no. 10); Zepos, *JGR* I: 255-256; Kolias, *Νικηφόρος Β' Φωκᾶς*, pp. 98-99.

LIT. Lemerle, *Agrarian History*, pp. 129-131; Kaplan, *Hommes et la terre*, pp. 251-252, 436.

---

two, based in part on his reinterpretation of the terms *klibanophoroi* and *epilorikophoroi* (see below, p. 107, n. 7), attach an economic and social significance to the decree which it does not have: cf. Magdalino, "The Byzantine army and the land": 21-26.

[3]Zonaras 3: 505^{16}–506^{10}.

CONCERNING *STRATIOTAI* WHO HAVE SOLD THEIR LANDS AND SUBSEQUENTLY RECLAIM THEM [OF THE HOLY EMPEROR NIKEPHOROS][4]

PROLOGUE The *protospatharios* Basil, the master of petitions,[5] has reported that he has been giving back lands, restored without payment, to the *stratiotai* because they have been found to be enrolled on these same lands. He has indicated that it appears to be a difficult problem that no one has the power to sell lands in his possession, no matter the quality or quantity of the property he owns.

1. As a result, with regard to *stratiotai* who have sold their lands up to the present time, it is our wish that this ruling shall apply: that immovable, productive property worth four pounds of gold be reserved for the *stratiotes* as the rate of his *strateia*. If someone possessing this much [property] is found to have sold some of his other land to another, and subsequently now demands it back, let him be eligible to take it back by preferential right[6] — not, however, without repayment, but upon restitution of the fair price. If, on the other hand, he has sold a portion from his immovable, productive property worth four pounds, this he is to take back without payment.

2. From now on, since cuirassed and heavily armoured cavalrymen have increased,[7] we ordain that no *stratiotes* is at liberty simply to

[4]The rubric is absent from Svoronos's text, but is included here from Kolias's edition.

[5]The master of petitions (*ho epi tôn deêseôn*) received and answered written appeals to the emperor. The *protospatharios* Basil is known only from this text; but it is relevant to the dating of the text to note that all the masters of petitions recorded during the tenth century received the title of *protospatharios*. Cf. Oikonomides, *Listes*, p. 322; *ODB* 1: 724.

[6]ἐν προτιμήσει: here *protimesis* must mean "preferential right" or "privilege." Cf. the passage in Constantine's novel putting registered military land in a privileged category and granting *stratiotai* the right (*pronomion*) to reclaim alienated military properties registered as such; cf. E, section I.4-7.

[7]The terms *klibanophoroi* and *epilorikophoroi* appear only in this passage. They have been taken to be synonymous with the heavily armoured cavalrymen (*kataphraktoi*) used in Byzantine armies during the tenth century, but this interpretation may be too narrow. I suggest that the two terms apply more broadly, the first referring to the skirmishers and regular cavalrymen (who wore a *klibanion*, a waist-length cuirass of lamellar or leather), the second to the heavy cavalrymen (who wore an *epilorikon*, or padded surcoat, over their cuirasses); the passage as a whole testifies to Phokas's efforts to equip his entire cavalry force with heavier armour. I prefer this interpretation of the two terms to Magdalino's ("The Byzantine army and the land": 21-22), who proposes that

sell any of his immovable holdings anywhere else unless he possesses immovable, productive property above the value of twelve pounds. But if he has sold some of these holdings assessed at such an amount, these he shall take back without repayment. If he has sold anything above this limit — of twelve pounds, that is to say — and then asks for this back, he will not receive it without payment, but upon restitution of the proper price.

---

klibanophoroi and *epilorikophoroi* refer to "armour bearers" or squires in the service of the heavy cavalrymen. This is a long way from the terms applied to service personnel (*χυδαῖος λαός, ὑπουργοί*) in the military manuals; furthermore, it is difficult to see why Phokas would cite growing numbers of squires as the reason for changing the law when he and other commanders forbade their soldiers from bringing large numbers of servants on campaign as they hindered the army's progress and effectiveness: cf. Eric McGeer, *Sowing the Dragon's Teeth: Byzantine Warfare in the Tenth Century* (Washington, D.C., 1994), pp. 66-67, 339. For further clarification of the terms applied to Byzantine armour, see now Tim Dawson, "*Kremasmata, kabadion, klibanion*: Some aspects of middle Byzantine military equipment reconsidered," *Byzantine and Modern Greek Studies* 22 (1998): 38-50.

N

BASIL II REPEALS NIKEPHOROS PHOKAS'S LEGISLATION ON THE MONASTERIES

This curious document, identifying itself as a chrysobull issued by Basil II in April 988, has been rejected as a forgery by Svoronos and other commentators on the land legislation. But as Thomas has pointed out, none of the arguments advanced against the novel's authenticity is decisive, nor does Svoronos's proposal that the document represents a forgery concocted in the reign of Isaac Komnenos (1057-1059) prove convincing.[1] As a result, despite the doubts concerning its authenticity, it has seemed more advisable to include a translation than to omit the decree from the collection.

TEXT Svoronos, *Novelles*, pp. 185-189 (document no. 13); Zepos, *JGR* I: 259.

LIT. Lemerle, *Agrarian History*, pp. 110-112.

NOVEL OF OUR PIOUS EMPEROR BASIL THE YOUNGER COMPLETELY REVOKING THE LEGISLATION OF THE EMPEROR NIKEPHOROS AGAINST THE CHURCHES AND PIOUS FOUNDATIONS

Since our Majesty appointed by God has learned both from monks noted for piety and virtue, and from many others, that the legislation concerning the churches of God and the pious foundations (or rather, against the churches and such foundations) issued by the interloper Lord Nikephoros is the cause and root of the present evils and the upheaval and turmoil in the world, and stands as an injustice and affront not only to the churches and pious foundations but also to God Himself — a fact confirmed especially on this count, for from the moment when the pro-

[1]Thomas, "A disputed novel."

visions of this legislation took effect until the present day nothing good whatsoever has come about in any way in our lifetime, but there has instead been no shortage of calamity[2] — it is our decree through the present pious signed chrysobull that the said legislation is null and void from the present day and is to remain forever invalid and ineffective, and that the laws preceding it concerning both the churches of God and the pious foundations, which our Majesty's grandfather of blessèd memory [Constantine VII], his father [Leo VI], and grandfather's grandfather [Basil I] promulgated most correctly and most pleasingly to God, are to be in force.[3] To ensure that the present edict remains secure and immutable, we have signed it below with our own hand and ordered it sealed with a golden seal on the fourth day in the month of April, in the first indiction, in the year 6496.

[2]If in fact the decree is an authentic document issued in 988, Basil could look back on a host of recent troubles, including the revolts of Bardas Skleros and Bardas Phokas, his clash with the *parakoimomenos* Basil Lekapenos (see p. 128, n. 20 below), and his disastrous expedition into Bulgaria in 986.

[3]On Basil's predecessors and their laws, see Thomas, "A disputed novel": 281, n. 33.

O

BASIL II TAKES UP THE DEFENCE OF THE POOR AND THE VILLAGE COMMUNES

This novel of Basil II, the last in the dossier of the tenth-century land legislation, exists in two versions. The text presented below as Version 1 was taken by Svoronos to be the authentic novel promulgated by Basil in January of 996, whereas Version 2, which shows marked differences in style and content, represented a late eleventh-century reworking of the decree.[1]

Issued thirty years after the last known land legislation, Basil's enactment maintains the position taken by his predecessors against the *dynatoi*, with particular reliance on the arguments and precedents established six decades earlier by Romanos Lekapenos in his novel of 934 (**C**). As in Lekapenos's novel, the purpose of Basil's legislation is to restrict the growth of the powerful and defend the poor and the village communes; but even though Basil's rhetoric echoes the strident tone of Lekapenos's novel, a comparison of the two reveals a telling addition to the aims of Basil's legislation. Where Lekapenos had vigorously asserted his duty as emperor to protect the poor and afflicted against the encroachments of the powerful, Basil now proclaims the emperor's duty to resist the expansion and ambitions of the *dynatoi* not only with regard to the poor, but also to the imperial supremacy itself, a threat that had recently materialised in the rebellions of Bardas Skleros and Bardas Phokas.

The emperor relies on his own observations to justify the sweeping measures in his decree. Having remarked that powerful persons command sufficient wealth and influence to withstand legal challenges from

[1]The differences between the two texts are listed by Svoronos: *Novelles*, pp. 190-198, and idem, "Remarques sur la tradition du texte de la novelle de Basile II concernant les puissants," *Zbornik Radova Vizantološkog Instituta* 8 (1964): 427-434. Basil's novel is mentioned by Skylitzes, p. 340^{95-3}: "The emperor drafted a law preventing the *dynatoi* from expanding in the village communes, a step which the emperor's grandfather Constantine Porphyrogennetos, and that emperor's father-in-law Romanos, also took." A partial translation of the novel (section III) is found in Charanis, "Monastic properties": 63-64.

the poor, Basil attempts to undermine their position by abolishing the forty-year term guaranteeing possession by prescriptive right, and compels the *dynatoi* to furnish authentic documentation proving that their right of ownership dates from before the famine. Citing his adherence to the intentions of Lekapenos's novel, he rules that from the time of the famine, poor persons are entitled to reclaim their lands without obligation to repay or reimburse the evicted *dynatoi*. In cases where crown lands have passed into the hands of powerful persons, thanks in no small part to the misconduct of imperial officials, Basil declares for good measure that the imperial treasury's right of eviction now extends back to the time of Caesar Augustus — to all intents and purposes, a limitless claim.

He likewise follows the example of Lekapenos in checking the expansion of monastic and ecclesiastical properties. He introduces measures to protect village lands from appropriation by bishops and metropolitans laying claim to small chapels founded within village communes, and insists that these chapels must remain under the authority of the villages and will not be subject to ecclesiastical dispensation. The remaining sections of the novel deal with the penalty for premeditated murder, the validation of deeds, and the relocation of market fairs.

This decree has traditionally been seen as part of Basil's "anti-aristocratic" policy, which included forcing the *dynatoi* to pay the tax arrears of their poor neighbours,[2] and the swift reduction of the high and mighty who caught his eye. Recent studies have modified this view of the emperor's dealings with the powerful, however, drawing attention instead to evidence of a more nuanced strategy on Basil's part, whereby he cultivated loyalties by favouring and promoting members of certain powerful families, while suppressing those families (such as the central Anatolian Phokades and Maleïnoi) whose ambitions he suspected, and striking down potential contenders for the throne.[3] In this light, his leg-

[2]This measure was known as the *allelengyon*, an obligation which compelled members of the same fiscal district to pay all tax deficits of their neighbours (cf. *ODB* 1: 69). The sources record that Basil exempted the poor from this obligation and imposed it on the *dynatoi*, over their protests and the opposition of the Patriarch Sergios: cf. Skylitzes, p. 247^{76-80}; Zonaras 3: 561^{1-6}. It was repealed during the reign of Romanos III Argyros (1028-1034).

[3]Charalambos Sifonas, "Basile II et l'aristocratie byzantine," *Byzantion* 64 (1994): 118-133; Cheynet, *Pouvoir et contestations*, pp. 329-336.

islation might best be interpreted not as a policy, but as a weapon created for selective use.

"Uneasy lies the head that wears a crown." Aside from its provisions and objectives, Basil's decree presents a sombre portrait of his severe, aloof character, reflecting his transition from an indulgent youth to a sovereign whose demeanour was calculated to inspire awe and fear in his subjects. The emergence of his harsh, forbidding nature is most evident in the decree, especially where he gives way to outrage and bitterness, vented at the *dynatoi* for their disdain of imperial legislation and at imperial bureaucrats for their connivance with the *dynatoi* and betrayal of the interests of the crown. It comes as no small surprise that Basil II, regarded as the most powerful ruler in Byzantine history, should be the one to express so plaintively the limits of imperial authority and the frustrations of an emperor unable to trust his officials to enforce the law.

TEXT Svoronos, *Novelles*, pp. 190-217 (document no. 14); Zepos, *JGR* I: 262-272.

LIT. Lemerle, *Agrarian History*, pp. 103-105, 112-114; Kaplan, *Hommes et la terre*, pp. 437-439.

Silver histamenon of Basil II

Version 1

NOVEL OF THE PIOUS EMPEROR BASIL THE YOUNGER CONCERNING POWERFUL PERSONS WHO ACQUIRED FROM THE POOR, SUBJECTING THEM TO PUNISHMENT FROM THE TIME OF THE FIRST LEGISLATION OF THE EMPEROR ROMANOS THE ELDER, NAMELY FROM THE SECOND INDICTION IN THE YEAR 6437

PROLOGUE 1. Whereas our Majesty, from the time he received imperial authority by the grace of God,[4] has endeavoured to investigate cases brought forward by both the wealthy and the poor, and has discovered that the *dynatoi* who wish to indulge their greed have a plausible premise for their own desires in the statute of limitations of forty years, and that they try either by gifts and bribes or by the influence at their disposal to wait it out and then take full ownership of the properties which they wrongfully gained at the expense of the poor, he has issued the present legislation, rectifying past cases on the one hand, setting restrictions on the *dynatoi* of our day on the other, and preventing persons in the future from attempting the same things, in the knowledge that they will have no support from that source [i.e. the statute of limitations], and that not only will they be deprived of the properties belonging to others, but so too will their children and those to whom they may bequeath them.

2. That our Majesty is not heedlessly or irrationally suspending ownership based on the statute of limitations, but is showing compassion for the poor, devoting care to the commonwealth and its condition, embracing justice, and curing the terrible affliction of greed,[5] will be evident from what we are obliged to say. For we have been most aggrieved on behalf of the poor because of the statute of limitations, and on our travels through the themes of our empire or while setting out for campaigns, we behold with our own eyes the encroachments and injustices taking place against them every day.

3. How will the statute of limitations take effect simply and in an ordinary manner, when by virtue of being a *dynatos* the person who exploited a poor man will long endure in a position of influence, perchance a *magistros* and Domestic of the Schools who will pass on his influence to his line, while his descendants are likewise *dynatoi* with success ex-

[4]The emperor's authority derived from God: Hunger, *Prooimion*, pp. 49-58.

Version 2

NOVEL OF THE PIOUS EMPEROR
BASIL THE PORPHYROGENNETOS
PRONOUNCED IN THE MONTH OF JANUARY
IN THE EIGHTH INDICTION IN THE YEAR 6504

PROLOGUE 1. Whereas our Majesty, from the time when he began to reign, has endeavoured to investigate cases brought forward by both the wealthy and the poor, and has discovered that the *dynatoi* wishing to indulge their greed have a plausible premise in the forty-year term, and that they try either by gifts or by their own influence to wait out this forty-year term and from then on take full ownership of the properties which they wrongfully gained at the expense of the poor, he has issued the present legislation, rectifying previous cases on the one hand, setting restrictions on the *dynatoi* of our day on the other, and checking persons in the future who know that they will find no support from the forty-year term, and that not only will they themselves be deprived of the properties belonging to others, but so too will their heirs.

2. That our Majesty is not heedlessly or irrationally overturning ownership based on the forty-year term, but is showing compassion for the poor, devoting care to the commonwealth and its condition, embracing justice, and excising greed,[5] will be evident from what we wish to say. For we have been much aggrieved on behalf of the poor because of the statute of limitations, and on our travels through the themes of our empire or while setting out for campaigns, we behold with our own eyes the encroachments and injustices which take place against them every single day.

3. How will the statute of limitations take effect simply and in an ordinary manner, when by virtue of being a *dynatos* the person who exploited a poor man will spend a long time in a position of influence and prosperity, and in the event that this person is a *patrikios*, will pass on his influence and prosperity to his successors, while those of his line, such as his children and grandchildren, are likewise *dynatoi* on familiar terms with the emperors and have flourished over seventy or a hundred

[5]Recalling Lekapenos's invective in **C**, section II.1.

tending over seventy or a hundred years? And so will we not put a stop to them, and enforce the justice due the poor for the things of which they have wrongfully been deprived and despoiled? If the *dynatos* happens to have made acquisitions or encroachments in the village communes, and his successors inherit his influence along with his wealth and give the poor man no room to take action against them concerning the things of which they wrongfully deprived and despoiled him, it is perfectly obvious that no matter how much time goes by in these cases, the poor man shall not be restricted in seeking and recovering what is his. If we do not do this, we will be handing the exploiter an opportunity to say, "since today I am prospering and the poor man is unable to take action against me, if my son too prospers or I myself continue to be prosperous, and because of our prosperity the time limit decreed by the laws elapses, we retain our acquisitions without forfeiture, and exploitation is to my benefit."

4. How will we not consider someone conversely a *dynatos* and not a *dynatos*, who was originally a poor man, and was afterwards granted titles and raised to the height of glory and good fortune? Not a *dynatos*, in that as long as he is among the lowly, we will allow the statute of limitations to benefit him; a *dynatos*, in that from the moment he has been honoured with a title, we will make it known that the statute of limitations is of no benefit to him.

years? Will we not put a stop to them, and not return to the poor the things of which they have wrongfully been despoiled? If the *dynatos* happens to have made acquisitions or encroachments in the village communes, and his successors inherit his influence along with his properties and give the poor man no room to take action against them concerning the things of which they wrongfully despoiled him, it is perfectly obvious that no matter how much time passes in these cases, the poor man shall not be restricted in seeking and recovering what is his. If we do not do this, we will be handing the exploiter an opportunity to say, "since today I am prospering and the poor man is unable to take action against me, if my son too prospers or I myself continue to be prosperous, and because of our prosperity the forty-year limit expires and we retain our acquisitions without forfeiture, exploitation would be to my benefit."

3 A. This is plain to see from the family of the Maleïnoi and in turn of the Phokades. For the *patrikios* Constantine Maleïnos and the *magistros* Eustathios,[6] his son, for one hundred or even one hundred and twenty years, enjoyed a period of prosperity coextensive with their lifetimes, the Phokades far beyond them.[7] For their great grandfather, and in turn their grandfather, then their father, and subsequently his sons, held perpetual dominance, I daresay, until we came on the scene. How will such people have the support of the statute of limitations?

4. Conversely, how will we not consider him a *dynatos* and not a *dynatos* who was originally a poor man, and was afterwards granted titles and raised to the height of glory? Not a *dynatos*, in that as long as he is among the lowly, we will allow the statute of limitations to benefit him; a *dynatos*, in that from the moment he has been honoured with a title, we will make it known that the statute of limitations is of no benefit to him.

[6]Skylitzes, p. 340[88-95], reports that on a journey through Cappadocia, Basil and his army were lavishly received by the *magistros* Eustathios Maleïnos. The emperor was so struck by his host's wealth and holdings that he incarcerated Maleïnos in Constantinople and confiscated all his properties upon his death. On Eustathios's career, and the Maleïnos family in the tenth century, see William Saunders, "The Aachen Reliquary of Eustathius Maleinus, 969-970," *Dumbarton Oaks Papers* 36 (1982): 211-219. Cheynet, *Pouvoir et contestations*, pp. 333-337, discusses Basil's efforts to suppress the Maleïnoi and their traditional allies, the Phokas family, after the great rebellions of the 980's.

[7]On the origins of the Phokas family and the decline in their fortunes during the reign of Basil II, see Jean-Claude Cheynet, "Les Phocas," in *Le traité sur la guérilla (De velitatione) de l'empereur Nicéphore Phocas (963-969)*, ed. Gilbert Dagron and Haralambie Mihaescu (Paris, 1986), pp. 289-315.

One can see these sorts of things taking place every day, as we recently found. We encountered a man who was originally one of the poor and the villagers, but afterwards one of the illustrious and wealthy, who as long as he was among the lowly paid his taxes with his fellow villagers and did not interfere with them;[8] but when God raised him to the title of *hebdomadarios*, then *koitonites*, and thereafter *protovestiarios*,[9] he took possession of the entire village commune and made it into his own estate. Accordingly, since he was raised to prominence in this way, and this was the state of affairs that pertained to him, is it possible that we should grant him [the support of] the statute of limitations and leave him free to keep what he wrongfully took? By no means. For which reason, when our Majesty was passing through this region and learned of the matter in a complaint brought forward by the poor, he demolished the man's lavish dwellings down to the foundations, gave back to the poor what was theirs, left him with the fiscal property which he had at the beginning, and made him one of the villagers once more.

5. To be counted as *dynatoi* are not only such persons, but also all those contained in the list of our great grandfather the emperor Romanos the elder and there enumerated in succession.[11]

1.1. As a result, therefore, we ordain through our present legislation that the properties acquired by the *dynatoi* in the village communes up to the time of the first legislation of our great grandfather the emperor Romanos the elder which have the surety of legal documents and confirmative attestations are to be secure and stay in their hands, just as was stated also in the old laws. It is therefore our wish that legal documents and confirmative attestations be brought forward, lest the *dynatoi* fraudulently allege that properties acquired by them of late have belonged to them for a long time without a written contract.

[8]This is the man identified as Philokales in Version 2; see *ODB* 3: 1656.

[9]*Hebdomadarios* (attendant at imperial banquets); *koitonites* (an attendant in the *koiton*, or imperial chamber); *protovestiarios* (keeper of the imperial wardrobe): titles reserved for eunuchs (as Philokales will have been); Oikonomides, *Listes*, pp. 130, n. 89; 305.

[11]Referring to the list in Romanos Lekapenos's novel of 934 (C).

One can see these sorts of things taking place every day, as we recently found. For we came upon Philokales, who was originally one of the poor and the villagers, but afterwards one of the illustrious and wealthy, and who as long as he was among the lowly paid his taxes with his fellow villagers and did not interfere with them;[8] but when God raised him to the title of *hebdomadarios*, then *koitonites*, and thereafter *protovestiarios*,[9] in short order he took possession of the entire village commune and made it into his own estate; he even changed the name of this village.[10] Accordingly, since he was raised to prominence in this way, and this was the state of affairs that pertained to him, is it possible that we should grant him the statute of limitations in support and leave him free to keep what he wrongfully took? It is not right. For which reason, when our Majesty was passing through this region and learned of the matter in a complaint brought forward by the poor, he demolished his lavish dwellings down to the foundations, gave back to the poor what was theirs, left him with the fiscal property which he had at the beginning, and made him one of the villagers once more.

5. To be counted as *dynatoi* are not only such individuals, but also all those enumerated in succession in the list of our great grandfather the emperor Romanos the elder.[11] He named even the *scholarioi* as *dynatoi*;[12] we also name them *dynatoi*, but we also add *protokentarchoi* since we have observed them as *dynatoi* in practice.[13]

1.1. As a result, therefore, we ordain through our present legislation that the properties acquired by the *dynatoi* in the village communes up to the time of the first legislation of our great grandfather the emperor Romanos the elder — but which have the surety of legal documents and confirmative attestations — are to remain in their control, as the old laws state. It is therefore our wish that legal documents and confirmative attestations are to be produced, lest the *dynatoi* fraudulently allege that properties acquired by them of late have been in their hands for a long time.

[10]In other words, he named it after himself.

[12]The inclusion of *scholarioi* (soldiers enrolled in the *tagmata*) as *dynatoi* is found not in Romanos Lekpenos's legislation but in Constantine VII's novel of 947 (**D**, section IV.1).

[13]*Protokentarchoi* would be roughly equivalent to senior centurions. Their inclination to behave like *dynatoi* may be explained by a passage in the *De cerimoniis* (p. 663^{8-11}) where twelve such officers are attested in the retinue of the *strategos* of the Thrakesian theme. See Oikonomides, *Fiscalité et exemption*, pp. 279-280.

From that time, [that is] from the time when the rule was issued in writing through the aforementioned legislation of our great grandfather the emperor Romanos the elder, until the present, which is the first day of the month of January in the ninth indiction of the year 6504, and also in the future, the statute of limitations is to have no force at all nor is it to have any effect at all against the poor in their dealings with the *dynatoi*; but the possessions of the poor are to be restored to them without the *dynatoi* having a legal claim to reimbursement for the prices or the improvements, for the reason that they are found to have transgressed the aforesaid legislation and deserve instead to be punished. For when our aforementioned great grandfather the emperor Romanos the elder wrote, saying that from now on I forbid the *dynatoi* to make acquisitions in village communes, he made it known that he forbade them in perpetuity and for eternity and did not grant them a time limit in support.

2. Not only for the future, as stated, do we set these laws, but we introduce this legislation also for the previous period of which we are speaking. For if we do not rectify those deeds of times past which are the cause of disturbance now, how would the future be secure and our successors feared? And how would they put a stop to forbidden acts?

From that time, [that is] from the time when the rule was published in writing through the aforementioned legislation of our great grandfather the emperor Romanos the elder, until the present, which is the first day of the month of January in the ninth indiction of the year 6504, and also in the future, the forty-year limit is to have no force whatsoever nor is it to be heeded, nor have any effect at all against the poor in their dealings with the *dynatoi*; but the possessions of the poor are to be restored to them, while the *dynatoi* are to have no legal claim to reimbursement for the price of these lands or the improvements but are to forfeit both the price and the expenditures for improvements, for the reason that they are found to have transgressed the aforesaid legislation and deserve instead to be punished. For when our aforementioned great grandfather the emperor Romanos the elder wrote, saying that from now on I forbid the *dynatoi* from making acquisitions in village communes, he made it known that he forbade them in perpetuity and for eternity and did not grant them the forty-year limit for support.

2. Not only for times to come do we set these laws, but we introduce this legislation also for times past, namely, from the time when the legislation of our great grandfather and lord emperor Romanos the elder was issued. For if we do not rectify those deeds of times past which are the cause of disturbance now, how will the future be secure and how will our successors be feared and exalted? And how will they prevent people from doing such things?

2 A. What is more troublesome than anything is that the *dynatoi* bequeath properties assembled by seizure and exploitation to their children, intending, with hope in the forty-year limit, to keep irrevocable ownership of such properties. With the removal of such support, namely, the forty-year limit, the children of the *dynatoi*, upon being deprived of this ill-gotten inheritance which they received from their fathers, will descend into poverty and utmost hardship, just as the grandchildren of the *magistros* Romanos Mousele suffered at the hands of our Majesty. For they who had such abundant property in the region of Philomelion, bequeathed by their grandfather and fathers, were deprived of this [property] upon a claim from the poor and themselves descended into penury.[14]

[14]Romanos Mousele is attested in the rank of *magistros* during the reigns of Constantine VII and Romanos II: cf. *Theophanes continuatus*, p. 443[19-20]; Skylitzes, p. 251[88]. The family of the Mousele rose to prominence during the ninth century and were among the powerful families based in the Anatolikon theme, where Philomelion was located; see Cheynet, *Pouvoir et contestations*, p. 223 and n. 128.

II.1. Since we found many misrepresentations in the boundary descriptions registered in the chrysobulls, and many such cases have been raised before our tribunal, we ordain that the boundary descriptions indicated are to have no validity at all, and that those who produce them are to have no just claim based upon them when ambiguity intrudes. For they are issued not with the knowledge and judgement of the emperor but of those receiving them, nor in turn are the *asekretai* registering them in the chrysobulls present at the site and watching when the measurement or the issuing of these boundary descriptions take place. For this reason, as was just made clear, they are to be invalid, and it is our wish that they have no force in cases where ambiguity intrudes. If, however, such boundary descriptions happen to be in the registers of the financial bureau or in any other confirmative legal documents, we order these be heeded and observed.

III.1. Since word has come directly to our Majesty from nearly all the themes that many of the village communes find themselves suffering harm and injustices, with some on the verge of extinction because of the spread of the monasteries — for it happens, as they report, in many of the villages that a villager puts up a church on his own land and grants his own portion of land to it, becomes a monk himself and resides there for the rest of his life, then another villager does the same and another likewise, and in that place there are two or three monks, whereupon when they die the local metropolitan, as it may be, or the bishop takes possession of the church and appropriates it and calls it a monastery, and partly by taking possession of such monasteries and partly by offering them as gifts to members of the *dynatoi*,[15] these selfsame metropolitans or bishops exploit the villages, abuse and annihilate them — we ordain that as many as there are of these chapels created in this way (we do not call them monasteries), they are all to be restored to the poor, and the involvement of the metropolitanate or the bishopric is to be removed from the place once and for all.

[15]See above, pp. 23-24, on the arrangement known as the *charistike*.

Excising this sort of injustice and inequality, and adjudicating the interests and rights for all persons, wealthy as well as poor, our Majesty suspends the time limit of forty years, so that, with knowledge of this, the *dynatoi* will not bequeath such an inheritance to their children; and the poor, bereft of their possessions, will not give up hope but will have the secure support of the present legislation in the recovery of their possessions.

II.1. Since many properties of poor persons — sometimes even imperial pastures — are found to be included in the boundary descriptions of the chrysobulls, with the result that those receiving the chrysobulls take possession of these properties on the basis of the boundary description, as our Majesty while on campaign found many times in pretty much all the east and all the west, it is commanded that these boundary descriptions are to have no validity at all, nor are those who bring them forward to have any legal claim based on them when ambiguity intrudes. For these boundary descriptions do not come from our Majesty; once he has a thorough grasp of the boundary descriptions let him regard them as secure and unaltered. Our Majesty grants the gift of the chrysobull, whereas the boundary descriptions produced by others cannot have the same reliability, security, and surety as come from the force of the chrysobull.

III.1. Since word has come directly to our Majesty from nearly all the themes that many of the village communes find themselves suffering harm and injustices, with some on the verge of extinction because of the spread of the monasteries — for it happens, as they report, in many of the villages that a villager puts up a church on his own land and with the approval of his fellow villagers grants his own portion of land to it, becomes a monk himself and resides there for the rest of his life, then another villager does the same and another likewise, and in that place there are two or three monks, whereupon when they die the local metropolitan, as it may be, or the bishop takes possession of the church and appropriates it and calls it a monastery, and partly by taking possession of such monasteries and partly by offering them as gifts to members of the *dynatoi*,[15] these selfsame metropolitans or bishops exploit the villages, abuse, and annihilate them — since many such cases have been brought before our tribunal, we ordain that as many as there are of these chapels created in this way (we do not call them monasteries), they are to be restored to the poor once more, and the involvement of the metropolitanate or bishopric is to be removed from the place once and for all.

If the metropolitans or bishops gave them as gifts to certain persons, we rule that such persons are to be thence expelled, even if perhaps they have had these for a long time, whereas the chapels, as stated, must be restored once again to the villagers, and are to remain chapels in perpetuity but under the authority of the villages, with as many monks in them as there were before. In these chapels, only the Eucharistic offering, the seal approving appointments, and the correction of the monks' lapses, should there be any, are to pertain to the metropolitans or the bishops as the case may be; but they are not to receive from the chapels either the customary fees or any other contribution whatsoever, as they would from monasteries; and these villages are required to have as many monks in the aforementioned chapels as there were in them before.

2. If there were stipends from the emperor or donations for the lighting of the lights given to some of these chapels, and if these chapels also have dependencies, the chapels are in future to remain under either the metropolitan or the bishop under whom they are at present, and they are in turn to keep these dependencies, even if it is not quite just, since at any rate they have already been deemed worthy of imperial solicitude; but the chapels are not to be transferred to other persons. It is for this reason that our Majesty calls these not monasteries but village chapels which (as stated) have some monks.

3. Contrariwise, those monasteries which have been established in villages in this way and have subsequently become quite large with eight or ten or even more monks in them, since many of the people around them have already been tonsured and donated their own properties to them, even if it is not quite just, we nevertheless allow these monasteries to be under the authority of the metropolitans or the bishops who are not prevented from granting or transferring them where they wish, but only if they previously had, and have even now, more than eight to ten monks and are able to sustain these monks with the means of support currently available to them. For they cannot make new acquisitions, having been prohibited previously by our great grandfather the emperor Romanos the elder,[16] and now by our Majesty. If, subsequent to the present edict,

[16]Recalling the ban on acquisitions of land by churches and monasteries in **C**, sections II.1, VI.1. Note that Basil ignores the legislation of Nikephoros Phokas, whom he considered an intruder upon the succession and whose descendants continued to challenge his rule.

If the metropolitans or bishops gave them as gifts to certain persons, such persons are to be thence expelled, even if perhaps they have had control of these for a long time, for we rule that the statute of limitations is to have no effect in these cases, but we ordain that the chapels, as stated, must be restored once again to the villagers, and are to remain chapels in perpetuity but under the authority of the villages, with as many monks in them as there were before. In these chapels, only the Eucharistic offering, the seal approving appointments, and the correction of the monks' lapses, should there be any, are to pertain to the metropolitans or the bishops as the case may be; but they are not to receive from the chapels either the customary fees or any other contribution whatsoever, as they would from monasteries. These villages are required to have as many monks in the aforementioned chapels as there were in them before.

2. If there were stipends from the emperor or donations for the lighting of the lights given to some of these chapels, and if these chapels also have dependencies, let them in future remain under either the metropolitanate or the bishopric under which they are at present, and let them in turn keep their dependencies, even if it is not quite just, since at any rate they have already been deemed worthy of imperial solicitude; but the chapels are not to be transferred to other persons. It is for this reason that our Majesty calls these not monasteries but village chapels which (as stated) have some monks.

3. Contrariwise, those monasteries which have been built in villages in this way, and have subsequently become quite large with eight or ten or even more monks in them, since many of the people around them have already become monks and granted their own properties there, even if it is not quite just, we nevertheless allow these monasteries to be under the authority of the metropolitans or the bishops who are not prevented from granting or transferring them where they wish, but only if they previously had, and have even now, more than eight to ten monks and are able to sustain these monks with the means of support currently available to them. For they cannot make new acquisitions, having previously been prohibited by our great grandfather the emperor Romanos the elder,[15] and now by our Majesty. If, subsequent to the present legislation,

metropolitans or bishops assign more monks to these chapels, since our Majesty now defines monasteries as those with more than eight or ten monks, we will not accept them as monasteries even if they have land sufficient to maintain these monks, but we consider them chapels created within the jointly owned property of the villages, just as we stated above, and we place them under the authority of the villages once again.

4. As for independent monasteries, which used to be large in the past, if perchance they do not have many monks now, but are without monks owing to the negligence of the metropolitan or bishop, as it may be, we rule that they are to be once more under the authority of the metropolitanates or bishoprics and that the metropolitans and bishops may grant or transfer them where and when they desire.

IV.1. In addition to these measures we decree that there is no time limit against the fisc, barring its legal claim; but the fisc may invoke its legal claim from the time of Caesar Augustus and be upheld in the recovery of this. For many are the factors which conspire against the fisc's seeking out its properties comprehensively: first, that the emperor, who is the ruler of the fisc, does not have the power or capability to supervise and monitor everything himself owing to his many occupations and concerns with the commonwealth and his being beset on all sides by a multitude of cares;[17] therefore he entrusts the affairs of the fisc to the officials who go out to the themes. Wherefore it is clear that what such officials arrange correctly and in accordance with justice, and not with a view to cheating the fisc, will be secure and ratified; what they arrange fraudulently and with a view to cheating the fisc remains invalid. Moreover, if it is necessary to speak on behalf of the fisc, let him to whom the rulership has fallen be at liberty to look into such matters and administer them to his satisfaction, whenever he wishes.

2. Above all, it shall never be the case that the forty-year period has passed uninterruptedly without an inspector or an imperial official[18] going out to investigate the legal claim of the fisc. If such an official is despatched with a view to confirming and invoking the legal claims of the fisc, and is found to be sordidly greedy and deceitful, in that he neglects to examine these matters and set them right and in his exploitative and depraved purpose reveals himself instead as a traitor to the legal claims

[17]The emperor's ceaseless cares and toils: Hunger, *Prooimion*, pp. 94-100.

[18]*basilikos*: an imperial agent, usually with financial responsibilities: cf. *ODB* 1: 266.

metropolitans or bishops assign more monks to these chapels, because our Majesty now defines monasteries as those with more than eight or ten monks, we do not accept them as monasteries even if they have land sufficient to maintain so great a number of monks, but we consider them chapels created within the jointly owned property of the villages, just as we stated above, and we place them under the authority of the villages once again.

4. As for independent monasteries which used to be large in the past, if perchance they do not have many monks now, but are without monks owing to the negligence of the metropolitan or bishop, as it may be, we rule that they are to be once more under the authority of the metropolitanates or bishoprics and that the metropolitans and bishops may grant or transfer them where and when they desire.

IV.1. In addition to these measures, we decree that there will be no time limit against the fisc capable of barring its legal claim; but the fisc can invoke its legal claim from the time of Caesar Augustus and is to be upheld in the recovery of this. For many are the factors which conspire against the fisc's seeking out its properties comprehensively: first, that the emperor, who is the ruler of the fisc, does not have the power or the capacity to supervise and monitor everything himself owing to his many occupations and concerns with the commonwealth and his being beset on all sides by a multitude of cares;[17] therefore he entrusts the affairs of the fisc to the officials who go out to the themes. Wherefore it is clear that what such officials arrange correctly and in accordance with justice, and not with a view to cheating the fisc, will be secure and ratified; what they arrange fraudulently and with a view to cheating the fisc will remain invalid. Moreover, if it is necessary to speak on behalf of the fisc, let him to whom the rulership has fallen be at liberty to look into such matters and administer them to his satisfaction, whenever he wishes.

2. Above all, it will never be the case that the forty-year period passed uninterruptedly without an inspector or a financial official going out to investigate the legal claim of the fisc. If such an official is despatched with a view to confirming and invoking the legal claims of the fisc, and is found to be sordidly greedy and deceitful, in that he neglects to examine these matters and set them right, and in his exploitative and depraved purpose reveals himself instead as a traitor to the legal claims

of the fisc, the fisc which never ceased to seek its legal claim will receive no adverse judgement on this account. And what our Majesty has found in practice in these matters is that both the inspectors and those otherwise supervising the fisc who are sent out on duties devise countless stratagems against it, and few are found who carry out our commands.

V.1. In addition to all of the aforesaid we decree also this: if perchance an old law holds that *protospatharioi* and persons superior to them who are involved in the foul crime of murder are not to be put to death but are to be stripped of their rank, they are nonetheless to suffer the other penalties decreed by that law;[19] but persons clearly proven to be murderers, or who employ ruses, conspiracies, plots or attacks to commit this deservedly loathsome crime, or who prevailed upon their underlings and thus brought this wicked deed to pass, are not to enjoy any benefit of rank, but are to be punished and put to death, as are those without dignities and titles. We state, however, that this is to take place whenever the plot is the result of deliberation or a stratagem, and the attack is clearly evident and with evil intent, and it is plain to all that either a group assembled and effected the murder which occurred with the encouragement, approval, and knowledge [of the *protospatharioi* or persons of higher rank], or that their underlings did it because of some pre-existing conflict and enmity between the murdered person and [the *protospatharioi* or persons higher in rank], or that the latter carried out this unlawful deed with their own hands, or else prevailed upon persons known to them and friends to accomplish this.

VI.1. In addition to everything said above we declare also this: since many chrysobulls were produced from the time when our Majesty rose to imperial authority until the *proedros* and *parakoimomenos* Basil fell from power,[20] in those times when our opinions had no effect but his

[19]Svoronos, *Novelles*, pp. 197-198, identifies this law with the *Basilika* LX: 39, 3, section 5. As did Roman law, Byzantine law meted out punishment according to social rank, so that holders of offices or titles above a certain rank were not subject to the death penalty for premeditated murder. Such persons were punished by banishment (*deportatio*), which carried loss of civil rights and confiscation of property: see Macrides, "Justice under Manuel Komnenos": 190-204, and idem, "Killing, asylum, and the law": 511-512.

[20]Basil Lekapenos was the illegitimate son of the emperor Romanos Lekapenos who rose to *parakoimomenos* (imperial chamberlain) and *proedros* (a dignity created during the reign of Nikephoros Phokas and the highest rank open to eunuchs; cf. Oikonomides, *Listes*, p. 299). He supervised the empire's internal affairs during the reigns of Phokas and John Tzimiskes, and controlled the administration of the state in the first years of

of the fisc, the fisc which never ceased to seek its legal claim will receive no adverse judgement on this account. And what our Majesty has found in practice in these matters is that both the inspectors and those otherwise superintending the fisc who are sent out on duties devise countless tricks against it, and few are found who carry out our commands.

V.1. In addition to all of the aforesaid we decree also this: if perchance an old law holds that *protospatharioi* and persons superior to them who are involved in the foul crime of murder are not to be put to death but are to be stripped of their rank, they are nonetheless to suffer the other penalties decreed by that law;[19] but persons clearly proven to be murderers, or who employ ruses, conspiracies, plots or attacks to commit this deservedly loathsome crime, or who prevailed upon their underlings and thus brought this wicked deed to pass, are not to enjoy any benefit of rank, but are to be punished and put to death, as are those without dignities and titles. We state, however, that this is to take place whenever the plot is the result of deliberation or a stratagem, and the attack is clearly evident and with evil intent, and it is plain to all that either a group assembled and effected the murder which occurred with the encouragement, approval, and knowledge [of the *protospatharioi* or persons of higher rank], or that their underlings did it because of some pre-existing conflict and enmity between the murdered person and [the *protospatharioi* or persons higher in rank], or that the latter carried out this unlawful deed with their own hands, or else prevailed upon persons known to them and friends to accomplish this.

VI.1. In addition to everything said above, we declare also this: since many chrysobulls were produced from the time when our Majesty rose to imperial authority until the *proedros* and *parakoimomenos* Basil fell from power,[20] in those times when our opinions had no effect but his

---

Basil's reign. But the emperor abruptly turned against his chamberlain in 985, deposing him and confiscating his properties. Among the charges Basil levelled at Basil Lekapenos were his accumulation of vast estates and his involvement in the wrongful alienation of crown lands (whence the emperor's complaints of fraudulent land deeds and his insistence on validating imperial documents). On Basil's career and downfall, see *ODB* 1: 270; Walter Brokkaar, "Basil Lecapenus: Byzantium in the tenth century," in *Studia byzantina et neohellenica neerlandica*, ed. Wim F. Bakker, Arnold F. van Gemert, and Willem J. Aerts (Leiden, 1972), pp. 199-234.

will and command prevailed in all matters, we rule that all the chrysobulls produced in those times are to remain invalid and ineffective, namely those which were not subsequently brought forward to our Majesty and had the confirmative formula inscribed upon them.[21] When our Majesty deposed the aforementioned *proedros* and *parakoimomenos*, he issued a command that all were to bring forward such chrysobulls for authentification with the addition of the words of the confirmative formula by our own script upon them. Let those not brought forward and which did not receive confirmation be unratified and invalid since they are illegitimate and false, for if they were genuine they would have been brought forward by their holders.

VII.1. Finally, it is our wish that the conflict concerning the right of the fairs receive the requisite ordering.[22] Whereas several persons have petitioned with complaints that where from time immemorial they have had a fair organised on their own lands, the merchants who organise the fair are withdrawing from them and going away and starting a new fair on the lands of those who receive them, leaving the former owners of the fair empty-handed, we order that if ever such a thing happens, if collectively and of one accord all the participants in the fair and the merchants, both those local to the region and those from outside, withdraw from the former fairholder and go to other places making a new fair, they have the freedom from interference and the liberty to make a transfer of the fair's location as they wish, as long as they are not being coerced in any way but are induced to do this of their own volition and choice. If there is a dispute among the fairholders, with some choosing to stay in the locations where they previously held the fair, others withdrawing from them and moving to parts elsewhere, then adherence to longstanding custom is to prevail, and the parties withdrawing, no matter who they are, are to be forced to join those choosing to stay, and the ancient privilege of the location is to prevail.

[21] *τὸ ἐτηρήθη*: "it has been confirmed."

[22] On Byzantine religious festivals and market fairs, see *ODB* 2: 775-776; Speros Vryonis, "The Panegyris of the Byzantine saint: A study in the nature of a medieval institution, its origins and fate," in *The Byzantine Saint*, ed. Sergei Hackel (San Bernardino, California, 1987), pp. 196-226. See also Angeliki Laiou, "Händler und Kaufleute auf dem Jahrmarkt," in *Fest und Alltag in Byzanz*, ed. Günter Prinzing and Dieter Simon (Munich, 1990), pp. 53-70, for a discussion of this section of the decree and the light it casts on the organisation of market fairs.

will and command prevailed in all matters, we rule that all the chrysobulls produced in those times are to remain invalid and ineffective, namely those which were not subsequently brought forward to our Majesty and had the confirmative formula inscribed upon them. When our Majesty deposed the aforementioned *proedros* and *parakoimomenos*, he issued a command that all were to bring forward such chrysobulls for authentification with the addition of the words of the confirmative formula by our own script upon them. Let those chrysobulls not brought forward and which did not receive confirmation be unratified and invalid, as they are illegitimate and false, for if they were genuine they would have been brought forward by their holders.

2. Since the relocations or the transfers of the fairs admit of division into four cases (for they are usually transferred either from *dynatoi* to *dynatoi*, from the weak to the weak, from the *dynatoi* to the weak, or from the weak to the *dynatoi*), the regulations already stated will have force in the first three cases only, that is, in transfers from the *dynatoi* to the *dynatoi*, from the weak to the weak, and from the *dynatoi* to the weak. The fourth case will be treated by us in greater detail and with greater benevolence. Since there is much unscrupulous behaviour among the *dynatoi* to wrest away the fairs from the rightful claims of the weak, we ordain that in this category this, namely, the transfer of the fair from the weak to the *dynatoi*, must in no way be allowed to happen, unless the whole fair withdraws of one accord and voluntarily and transfers to a place where it had previously been held in times past,[23] such that the two conditions coincide in the matter: the right of longstanding custom, and the mutual agreement and consent of the whole group. For whereas in the other three situations the presence of only one condition can suffice, as for example, of only mutual consent when the entire fair transfers, or of only longstanding custom when [opinion about] the fair is clearly split and it is divided into two; but in this fourth case, we order that the combination of the two conditions must be present in the authorisation of the transfer of fairs from the weak to the *dynatoi*, both the aforesaid consent of all and the right of longstanding custom, since we are extending a helping hand to the poor in every way and checking the excessive power of the *dynatoi*, a matter best treated long ago by our blessèd great grandfather, the lord emperor Romanos the elder, in the alienation of the immovable properties of the weak to the *dynatoi*.

[23]The point appears to be this: in order to acquire a fair from the weak, the *dynatos* had to have a tradition of a fair being held on his lands (satisfying the condition of longstanding custom), which had been interrupted when the fair was transferred to a weak person.

Glossary of Terms

asekretis	a secretary who drafted or copied official documents in the imperial chancery (*ODB* 1: 204).
Domestic of the Schools	the commander-in-chief of the Byzantine army after the emperor (*ODB* 1: 647-648).
Logothete of the Drome	a high official who supervised the maintenance of the imperial road and post system, as well as foreign affairs (*ODB* 2: 1247-1248).
magistros	a high-ranking dignity, the highest conferred on persons not members of the imperial family (*ODB* 2: 1267).
nomisma	the standard Byzantine gold coin, struck at 72 to the pound; also known as a *solidus* (*ODB* 2: 1490; 3: 1924)
patrikios	a dignity conferred upon governors of themes and high military commanders (*ODB* 3: 1600).
protasekretis	chief secretary of the imperial chancery who oversaw the definitive edition of imperial documents (*ODB* 3: 1742).
protonotarios	a provincial official who supervised the supply, recruitment, and readiness of the thematic forces (*ODB* 3: 1746).
protospatharios	a member of the imperial bodyguard who received this dignity from the emperor directly (*ODB* 3: 1748).
quaestor	a judge and adviser on legal matters whose duties included the preparation of imperial novels (*ODB* 3: 1765-1766).
scholarios	a soldier enrolled in one of the four imperial regiments known as the *tagmata* (*ODB* 3: 2007).

Bibliography

1. Primary sources: Editions, collections, and translations

Constantine VII Porphyrogennetos. *Constantini Porphyrogeniti imperatoris de cerimoniis aulae byzantinae*. Ed. J. Reiske. 2 vols. Bonn, 1829-1830.

Darrouzès, Jean. *Epistoliers byzantins du X^e siècle*. Paris: Institut français d'études byzantines, 1960.

Fiscal Treatise, ed. Franz Dölger. In *Beiträge zur Geschichte der byzantinischen Finanzverwaltung, besonders des 10. und 11. Jahrhunderts*, pp. 113-123. Leipzig-Berlin, 1927. Reprinted Hildesheim: G. Olms, 1960.

Noailles, Pierre, and Dain, Alphonse. *Les Novelles de Léon VI, le Sage*. Paris: Société d'Edition "Les Belles Lettres", 1944.

Pharr, Clyde, et al. *The Theodosian Code and Novels, and the Sirmondian Constitutions*. Princeton: Princeton University Press, 1952.

Scott, Samuel P. *The Civil Law; including the Twelve Tables, the Institutes of Gaius, the Rules of Ulpian, the Opinions of Paulus, the Enactments of Justinian, and the Constitutions of Leo.* 17 vols. Cincinnati: The Central Trust Company, 1931. Reprinted New York: AMS Press, 1973.

Skylitzes, John. *Ioannis Scylitzae Synopsis historiarum*, ed. Hans Thurn. Corpus fontium historiae byzantinae 5. Berlin and New York: Walter de Gruyter and Company, 1973.

Svoronos, Nikos. *Les Novelles des Empereurs Macédoniens concernant la terre et les stratiotes*. Ed. P. Gounaridis. Athens: Centre de Recherches Byzantines, F.N.R.S. Fondation Culturelle de la Banque Nationale, 1994.

Theophanes continuatus. Ed. Immanuel Bekker. Corpus scriptorum historiae byzantinae. Bonn, 1838.

Vasiliev, A.A. *Byzance et les Arabes*. French edition prepared by Henri Grégoire and Marius Canard. 3 vols. Brussels: Institut de philologie et d'histoire orientales, 1935-1968.

Zepos, Ioannes, and Zepos, Panagiotes. *Jus graecoromanum*. 8 vols. Athens, 1931. Reprinted Aalen: Scientia Aalen, 1962.

Zonaras, John. *Ioannis Zonarae Epitomae historiarum*. Ed. Maurice Pinder and Theodore Büttner-Wobst. 3 vols. Bonn, 1841-1897.

2. SECONDARY SOURCES

Angold, Michael. *The Byzantine Empire, 1025-1204. A Political History*. 2nd. ed. London and New York: Longman, 1997.

Avotins, Ivars. *On the Greek of the Novels of Justinian*. Hildesheim and New York: Olms-Weidmann, 1992.

Barker, Ernest. *Social and Political Thought in Byzantium, from Justinian I to the last Palaeologus*. Oxford: Clarendon Press, 1957.

Bartusis, Mark C. "'ΕΞΑΛΕΙΜΜΑ: Escheat in Byzantium." *Dumbarton Oaks Papers* 40 (1986): 55-81.

Beck, Hans-Georg. *Kirche und theologische Literatur im byzantinischen Reich*. Munich: Beck, 1959.

Brand, Charles. "Two Byzantine treatises on taxation." *Traditio* 25 (1969): 35-60.

Brokkaar, Walter G. "Basil Lacapenus: Byzantium in the tenth century." In *Studia byzantina et neohellenica neerlandica*, ed. Wim F. Bakker, Arnold F. van Gemert, and Willem J. Aerts, pp. 199-234. Leiden: E.J. Brill, 1972.

Burgmann, Ludwig. "Editio per testamentum." *Rechtshistorisches Journal* 13 (1994): 455-479.

The Byzantine Aristocracy, IX to XIII Centuries. Ed. Michael Angold. BAR International Series 221. Oxford: BAR International Series, 1984.

Byzantine Court Culture from 829 to 1204. Ed. Henry Maguire. Washington, D.C.: Dumbarton Oaks Research Library and Collection, 1997.

Campbell, John Kennedy. *Honour, Family, and Patronage: A Study of Institutions and Moral Values in a Greek Mountain Community*. Oxford: Clarendon Press, 1964.

Charanis, Peter. "The monastic properties and the state in the Byzantine Empire." *Dumbarton Oaks Papers* 4 (1948): 51-118.

Cheynet, Jean-Claude. *Pouvoir et contestations à Byzance (963-1210)*. Paris: Université de Paris-Panthéon Sorbonne, 1990.

——. "Fortune et puissance de l'aristocratie (X^{e}-XII^{e} siècle)." In *Hommes et richesses dans l'Empire byzantin*, 2: 199-213.

——. "Les Phocas." In *Le traité sur la guérilla (De velitatione) de l'empereur Nicéphore Phocas (963-969)*, ed. Gilbert Dagron, and Haralambie Mihăescu, pp. 289-315. Paris: Editions du Centre national de recherche scientifique, 1986.

Dagron, Gilbert. "Minorités ethniques et religieuses dans l'Orient byzantin à la fin du X^e et au XI^e siècle: l'immigration syrienne." *Travaux et Mémoires* 6 (1976): 177-216.

Dawson, Tim. "*Kremasmata, kabadion, klibanion*: Some aspects of middle Byzantine military equipment reconsidered." *Byzantine and Modern Greek Studies* 22 (1998): 38-50.

Dölger, Franz. *Beiträge zur Geschichte der byzantinischen Finanzverwaltung, besonders des 10. und 11. Jahrhunderts*. Leipzig and Berlin, 1927. Reprinted Hildesheim: G. Olms, 1960.

——. *Regesten der Kaiserurkunden des oströmischen Reiches von 565-1453*. 1: *Regesten von 565-1025*. Munich and Berlin: Verlag R. Oldenbourg, 1924. Reprinted Hildesheim: Dr. H.A. Gerstenberg, 1976.

——, and Karayannopulos, Johannes. *Byzantinische Urkundenlehre*. Munich: C.H. Beck'sche Verlagsbuchhandlung, 1968.

Dunn, Archibald. "The exploitation and control of woodland and scrubland in the Byzantine world." *Byzantine and Modern Greek Studies* 16 (1992): 235-298.

Fögen, Marie Theres. "Legislation in Byzantium: A political and a bureaucratic technique." In *Law and Society in Byzantium, Ninth-Twelfth Centuries*, pp. 53-70.

Garsoïan, Nina. "The problem of Armenian integration into the Byzantine Empire." In *Studies on the Internal Diaspora of the Byzantine Empire*, ed. Hélène Ahrweiler and Angeliki E. Laiou, pp. 53-124. Washington, D.C.: Dumbarton Oaks Research Library and Collection, 1998.

Górecki, Danuta. "Prescription in the Macedonian novels on pre-emption: A linguistic, legal, and political inquiry." *Byzantinoslavica* 58 (1997): 113-130.

——. "The *strateia* of Constantine VII: The legal status, administration and historical background." *Byzantinische Zeitschrift* 82 (1989): 157-176.

Grégoire, Henri. "Le lieu de naissance de Romain Lécapène et de Digénis Acritas." *Byzantion* 8 (1933): 572-574.

Guilland, Rodolphe. *Recherches sur les institutions byzantines*. 2 vols. Amsterdam and Berlin: A.M. Hakkert, 1967.

Haldon, John F. "Military service, military lands, and the status of soldiers: Current problems and interpretations." *Dumbarton Oaks Papers* 47 (1993): 1-67.

——. *Byzantium in the Seventh Century: the transformation of culture*. Cambridge: Cambridge University Press, 1990; 2nd edition, 1997.

——. *Byzantine Praetorians. An Administrative, Institutional and Social Survey of the Opsikion and Tagmata, ca. 580-900*. Bonn: Dr. Rudolf Habelt GMBH, 1984.

——. *Recruitment and Conscription in the Byzantine Army c. 550-950. A Study on the Origins of the Stratiotika ktemata*. Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1979.

Harvey, Alan. *Economic Expansion in the Byzantine Empire, 900-1200*. Cambridge: Cambridge University Press, 1989.

Hendy, Michael F. *Studies in the Byzantine Monetary Economy, c. 300-1450*. Cambridge: Cambridge University Press, 1985.

Hommes et richesses dans l'Empire byzantin. Ed. Vassiliki Kravari, Jacques Lefort, and Cecile Morrisson. 2 vols. Paris: Editions P. Lethielleux, 1989-1991.

Howard-Johnston, James D. "Crown lands and the defence of imperial authority in the tenth and eleventh centuries." *Byzantinische Forschungen* 21 (1995): 75-100.

Hunger, Herbert. *Prooimion. Elemente der byzantinischen Kaiseridee in den Arengen der Urkunden*. Vienna: H. Böhlaus Nachfasser, 1964.

Kaplan, Michel. *Les hommes et la terre à Byzance du VI^e^ au XI^e^ siècle: propriété et exploitation du sol*. Paris: Université de Paris, 1992.

——. "Maisons impériales et fondations pieuses: réorganisation de la fortune impériale et assistance publique de la fin du VIII^e^ siècle à la fin du X^e^ siècle." *Byzantion* 61 (1991): 340-364.

Kazhdan, Alexander. "Do we need a new history of Byzantine law?" *Jahrbuch der Österreichischen Byzantinistik* 39 (1989): 1-28.

——. "The concepts of freedom (eleutheria) and slavery (duleia) in Byzantium." In *The Concept of Freedom in the Middle Ages: Islam, Byzantium and the West*, ed. George Makdisi, Dominique Sourdel, and Janine Sourdel-Thomine, pp. 215-226. Paris: Société d'Edition "Les Belles Lettres," 1985.

——. "'Velikoe vosstanie' Vasiliya Mednoi Ruki." *Vizantiiskii Vremennik* 4 (1951): 73-83.

——, and McCormick, Michael. "The social world of the Byzantine court." In *Byzantine Court Culture from 829 to 1204*, pp. 167-197.

Kolias, Taxiarchis. *Νικηφόρος Β' Φωκᾶς (963-969). Ὁ στρατηγὸς αὐτοκράτωρ καὶ τὸ μεταρρυθμιστικό του ἔργο*. Athens: Historical Publications St. D. Basilopoulos, 1993.

Kühn, Hans-Joachim. *Die byzantinische Armee im 10. und 11. Jahrhundert. Studien zur Organisation der Tagmata*. Vienna: Verlag Fassbänder, 1991.

Laiou, Angeliki E. "The general and the saint: Michael Maleinos and Nikephoros Phokas." In *Εὐψυχία. Mélanges offerts à Hélène Ahrweiler*, ed. Michel Balard, Joëlle Beaucamp, Jean-Claude Cheynet, Catherine Jolivet-Lévy, Michel Kaplan, Bernadette Martin-Hisard, Paul Pagès, Catherine Piganiol, Jean-Pierre Sodini, 2: 399-412. Paris: Universite de Paris–Pantheon Sorbonne, 1998.

——. "Law, justice, and the Byzantine historians: ninth to twelfth centuries." In *Law and Society in Byzantium, Ninth-Twelfth Centuries*, pp. 151-185.

——. "Händler und Kaufleute auf dem Jahrmarkt." In *Fest und Alltag in Byzanz*, ed. Günter Prinzing and Dieter Simon, pp. 53-70. Munich: Verlag C.H. Beck, 1990.

Law and Society in Byzantium, Ninth-Twelfth Centuries. Ed. Angeliki E. Laiou and Dieter Simon. Washington, D.C.: Dumbarton Oaks Research Library and Collection, 1994.

Lemerle, Paul. *The Agrarian History of Byzantium from the Origins to the Twelfth Century: The Sources and Problems*. Galway: Galway University Press, 1979.

——. *Cinq études sur le XI^e siècle byzantin*. Paris: Editions du Centre national de la recherche scientifique, 1977.

——. *Le premier humanisme byzantin: notes et remarques sur enseignement et culture à Byzance des origines au X^e siècle*. Paris: Presses universitaires de France, 1971.

Lokin, J.H.A. "The significance of law and legislation in the law books of the ninth to eleventh centuries." In *Law and Society in Byzantium, Ninth-Twelfth Centuries*, pp. 71-91.

Macrides, Ruth. "Killing, asylum, and the law in Byzantium." *Speculum* 68 (1988): 509-538.

——. "Justice under Manuel I Komnenos: Four novels on court business and murder." *Fontes Minores* 6 (1984): 99-204.

Magdalino, Paul. "The Byzantine army and the land: From *stratiotikon ktema* to military *pronoia*." In *Byzantium at War (9th-12th c.)*, ed.

Nicolas Oikonomides, pp. 15-36. Athens: Institute for Byzantine Research, 1997.

——. "Justice and finance in the Byzantine state, ninth to twelfth centuries." In *Law and Society in Byzantium, Ninth-Twelfth Centuries*, pp. 93-115.

——. *The Empire of Manuel I Komnenos, 1143-1180*. Cambridge: Cambridge University Press, 1993.

——. "The Byzantine aristocratic *oikos*." In *The Byzantine Aristocracy, IX to XIII Centuries*, pp. 92-111.

Markopoulos, Anathasios. "Le témoignage du *Vaticanus gr.* 163 pour la période entre 945-963." Σύμμεικτα 3 (1979): 83-119.

McGeer, Eric. "The legal decree of Nikephoros II Phokas concerning Armenian *stratiotai*." In *Peace and War in Byzantium. Essays in Honor of George T. Dennis, S.J.*, ed. Timothy S. Miller and John W. Nesbitt, pp. 123-137. Washington, D.C.: Catholic University of America Press, 1995.

——. *Sowing the Dragon's Teeth: Byzantine Warfare in the Tenth Century*. Washington, D.C.: Dumbarton Oaks Research Library and Collection, 1994.

Monier, Raymond. *Manuel élémentaire du droit romain*. 2 vols. Paris: Domat-Montchrestien, 1935- 1936. Reprinted Darmstadt: Aalen Scientia, 1970.

Morris, Rosemary. *Monks and Laymen in Byzantium, 843-1118*. Cambridge and New York: Cambridge University Press, 1995.

——. "The two faces of Nikephoros Phokas." *Byzantine and Modern Greek Studies* 12 (1988): 83-115.

——. "Monasteries and their patrons in the tenth and eleventh centuries." *Byzantinische Forschungen* 10 (1985): 185-231.

——. "The Byzantine aristocracy and the monasteries." In *The Byzantine Aristocracy, IX to XIII Centuries*, pp. 112-137.

——. "The powerful and the poor in tenth-century Byzantium: Law and reality," *Past and Present* 73 (1976): 3-27.

Mullett, Margaret. "Patronage in action: the problems of an eleventh-century bishop." In *Byzantine Church and People*, ed. Rosemary Morris, pp. 125-147. Birmingham: Centre for Byzantine, Ottoman, and Modern Greek Studies, University of Birmingham, 1990.

——. "Byzantium: A friendly society?" *Past and Present* 118 (1987): 3-24.

Nicholas, Barry. *An Introduction to Roman Law*. Oxford: Clarendon Press, 1962.

Norwich, John Julius. *Byzantium. The Apogee*. London and New York: Viking, 1991.

Oikonomides, Nicolas. "Title and income at the Byzantine court." In *Byzantine Court Culture from 829 to 1204*, pp. 199-215.

——. *Fiscalité et exemption fiscale à Byzance (IX^e-XI^e s.)*. Institut de recherches byzantines monographie 2. Athens: Fondation nationale de la recherche scientifique, 1996.

——. "The social structure of the Byzantine countryside in the first half of the tenth century." *Σύμμεικτα* 10 (1996): 105-125.

——. "Terres du fisc et revenu de la terre aux X^e-XI^e siècles." In *Hommes et richesses dans l'Empire byzantin*, 2: 321-337.

——. "Tax exemptions for the secular clergy under Basil II." In *ΚΑΘΗΓΗΤΡΙΑ. Essays Presented to Joan Hussey on her 80th Birthday*, ed. J. Chrysostomides, pp. 317-326. Camberley: Porphyrogenitus, 1988.

——. "Middle Byzantine provincial recruits: Salary and armaments." In *GONIMOS. Neoplatonic and Byzantine Studies Presented to Leendert G. Westerink at 75*, ed. John Duffy and John Peradotto, pp. 121-136. Buffalo: Arethusa, 1988.

——. "'Η Πεῖρα περὶ παροίκων." In *Ἀφιέρωμα στὸν Νῖκο Σβορῶνο*, ed. Chrysa Maltezou, 1: 232-241. Rethymno: University of Crete, 1986.

——. "The 'Peira' of Eustathios Romaios: An abortive attempt to innovate in Byzantine law." *Fontes Minores* 7 (1986): 169-192.

——. "Das Verfalland im 10.-11. Jahrhundert: Verkauf und Besteuerung." *Fontes Minores* 7 (1986): 161-168.

——. "Οἱ Βυζαντινοὶ δουλοπάροικοι." *Σύμμεικτα* 5 (1983): 295-302.

——. "L'organisation de la frontière orientale de Byzance aux X^e-XI^e siècles et le taktikon de l'Escorial." In *Documents et études sur les institutions de Byzance (VII^e-XV^e s.)*, no. XXIV. London: Variorum Reprints, 1976.

——. "L'évolution de l'organisation administrative de l'Empire byzantin au XI^e siècle (1025-1118)." *Travaux et Mémoires* 6 (1976): 125-152.

——. *Les Listes de préséance byzantines des IX^e et X^e siècles*. Paris: Editions du Centre national de la recherche scientifique, 1972.

Ostrogorsky, George. "Observations on the aristocracy in Byzantium." *Dumbarton Oaks Papers* 25 (1971): 3-32.

——. *History of the Byzantine State*. Revised edition. Trans. Joan Hussey. New Brunswick, N. J.: Rutgers University Press, 1969.

——. "The peasant's pre-emption right: An abortive reform of the Macedonian emperors." *Journal of Roman Studies* 37 (1947): 117-126.

The Oxford Dictionary of Byzantium. Alexander P. Kazhdan, Editor-in-chief; Alice-Mary Talbot, Executive editor; Anthony Cutler, Editor for art history; Timothy E. Gregory, Editor for archaeology and historical geography; Nancy P. Ševčenko, Associate editor. 3 vols. New York and Oxford: Oxford University Press, 1991.

Papachryssanthou, Denise. "La vie monastique dans les campagnes byzantines du VIII[e] au XI[e] siècle: Ermitages, groupes, communautés." *Byzantion* 43 (1973): 158-180.

Papagianni, Eleftheria. "Vorkaufsrecht und Verwandtschaft." In *Eherecht und Familiengut in Antike und Mittelalter*, ed. Dieter Simon, pp. 147-160. Munich: Oldenbourg, 1992.

Pieler, Peter. "Ἀνακάθαρσις τῶν παλαιῶν νόμων und Makedonische Renaissance." *Subseciva Groningana* 3 (1989): 61-77.

——. "Byzantinische Rechtsliteratur." In *Die hochsprachliche profane Literatur der Byzantiner*, ed. Herbert Hunger, 2: 343-480. Munich: Beck, 1978.

Saradi, Helen. "The Byzantine tribunals: Problems in the application of justice and state policy (9th-12th c.)." *Revue des études byzantines* 53 (1995): 165-204.

——. "On the '*archontike*' and '*ekklesiastike dynasteia*' and '*prostasia*' in Byzantium, with particular attention to the legal sources: A study in social history of Byzantium." *Byzantion* 64 (1994): 69-117, 314-351.

Saunders, William B.R. "The Aachen Reliquary of Eustathius Maleinus, 969-970." *Dumbarton Oaks Papers* 36 (1982): 211-219.

Schminck, Andreas. "'Novellae extravagantes' Leons VI." *Subseciva Groningana* 4 (1990): 195-209.

Ševčenko, Ihor. "Poems on the deaths of Leo VI and Constantine VII in the Madrid manuscript of Scylitzes." *Dumbarton Oaks Papers* 23/24 (1969/1970): 187-228.

Sifonas, Charalambos S. "Basile II et l'aristocratie byzantine." *Byzantion* 64 (1994): 118-133.

Stolte, Bernard H. "Not new but novel. Notes on the historiography of Byzantine law." *Byzantine and Modern Greek Studies* 22 (1998): 264-279.

Svoronos, Nikos. *La Synopsis major des Basiliques et ses appendices: Recherches sur la tradition juridique à Byzance*. Paris: Presses universitaires de France, 1964.

——. "Remarques sur la tradition du texte de la novelle de Basile II concernant les puissants." *Zbornik Radova Vizantološkog Instituta* 8 (1964): 427-434.

Thomas, John Philip. *Private Religious Foundations in the Byzantine Empire*. Washington, D.C.: Dumbarton Oaks Research Library and Collection, 1987.

——. "The crisis of Byzantine ecclesiastical foundations, 964-1025." *Byzantinische Forschungen* 9 (1985): 255-274.

——. "A disputed novel of Basil II." *Greek, Roman and Byzantine Studies* 24 (1983): 273-283.

Tougher, Shaun. *The Reign of Leo VI (886-912). Politics and People*. Leiden, New York, and Cologne: E.J. Brill, 1997.

Treadgold, Warren. *A History of the Byzantine State and Society*. Stanford: Stanford University Press, 1997.

Troianos, Spyros. "Die Strafen im byzantinischen Recht. Eine Übersicht." *Jahrbuch der Österreichischen Byzantinistik* 42 (1992): 55-74.

Vryonis, Speros. "The Panegyris of the Byzantine saint: A study in the nature of a medieval institution, its origins and fate." In *The Byzantine Saint*, ed. Sergei Hackel, pp. 196-226. San Bernardino, Ca.: The Borgo Press, 1987.

Wal, Nicolaas, van der, and Lokin, J.H.A. *Historiae Iuris Graecoromani Delineatio. Les sources du droit byzantin de 300 à 1453*. Groningen: Egbert Forsten, 1985.

Weiss, Günter. "Die Entscheidung des Kosmas Magistros über das Parökenrecht: Ein Beitrag zur Rechtsgrundlage bäulerliche Ansiedlungen in Byzanz." *Byzantion* 48 (1978): 477-500.

Westerink, Leendert G. *Nicétas Magistros. Lettres d'un exilé (928-946)*. Paris: Editions du Centre national du recherche scientifique, 1973.

Whittow, Mark. *The Making of Orthodox Byzantium, 600-1025*. Houndmills, Basingstoke, Hampshire and London: MacMillan Press, 1996.

Index

abandoned land 14, 47, 66 n11, 86-87
adoreia 74 n11
Aegean Sea (theme) 71
Agelastos, Leo 68
agridia 9
allelengyon 112 and n2
Anatolikon theme 30, 61, 63, 68
apotagê 23 n43
aristocracy: see *dynatoi*
Armeniakon theme 68
Armenian *stratiotai* 18, 31, 86-89
Armenian themes 31, 86-87, 88
associates (*koinonoi*) 38, 39, 40, 41, 42 and n10, 43, 66 and n9

Bardas, Caesar 2
Basil of Caesarea, St. 21
Basil I 1-2, 110
Basil II 2, 6, 13, 21, 23, 25, 30, 90, 109, 111-113
Basil Chrysocheir 52
Basil (master of petitions) 107
Basilika 2, 4, 128 n19
Bulgaria 2

Cappadocia (theme) 30
cavalrymen, heavily armoured (kataphraktoi) 104, 106, 107
chapels 23-24, 112, 122-126, 123-127; *see also* oratories
charistikê 23-24, 122, 123, 124, 125, 126, 127
chorion: see village commune
chrysobulls, validation of 118, 119, 122, 123, 128-130, 131
Cilicia 2, 31
compensation (for improvements) 56, 59-60, 65, 72, 77-75, 77-78, 88-89, 102-103, 107-108; in homicide cases 87, 89
Constantine VII Porphyrogennetos 6, 13, 17, 19, 28, 61, 62, 68, 77, 78, 80 n7, 82, 83, 87, 98, 104, 105, 110
corruption 29, 61, 63, 68, 75-76, 88 n8, 113, 119, 122, 123, 126-128, 127
Crete 2
curatories (*kouratoreiai*) 15, 51-52, 88
custom, customary law 16, 70, 71, 73, 74, 132
Cyprus 2

Dekapolites, Theodore 6, 69, 77-78, 80 n7, 82
demosion 26
Doukas, Constantine 52
dowry 39, 44, 65
dynatoi (powerful persons) 7, 8, 11, 12, 13, 14, 17, 20-21, 22, 23, 53, 61, 62, 63, 64, 66, 69, 70, 75, 76, 88, 114, 115, 121, 122, 132; definition of 26-27, 28, 39, 46, 47, 50, 55, 59, 72, 114-116, 115, 117-119; rise of 28-29; imperial policy towards 28-31, 51-53, 97-99, 99-100, 102-103, 111-113, 118-120, 119-123

Epanagoge 2, 99 n5
epi tôn deéseôn 107 n5
epi tôn oikeiakôn 14 n25
epilorikophoroi 107 n7
episkepseis 15
exchanges 39, 44, 45, 47, 64, , 84, 88

fairs (*panegyreis*), transfer of 112, 130, 132
famine (927-928) 10-11, 12, 22, 27, 38, 49-50, 56, 64, 78, 98, 101, 112
fisc, claims of 126-128, 127-129
fiscal system 7-8, 10, 15, 26
Fiscal Treatise 9, 66 n11
freedom (*eleutheria*) 51-53, 60

gifts (prenuptial, *mortis causa*) 39, 44, 45, 47, 57, 59, , 84

higoumenos 21, 26, 55, 59
homas 10
homicide: *see* murder

idiosystaton 66 n11; *see also* abandoned land
imperial ideology 50, 52-53, 53-54, 60, 70-71, 97-98, 99-100, 111, 114, 115
Isaac I Komnenos 109

Jacobites 87
Justinian 2, 27

Kibyrrhaiotai, theme of the 71
klasma, klasmatic land: *see* abandoned land
klibanophoroi 107 n7
Kosmas the *magistros* 37 n3, 49 n1
Kourkouas, John 49 n1, 68 n1
ktesis 9, 10
Kyminas, Mount 91

Lakape, monastery of 88
land legislation, texts of 3-6; purpose of 7-8, 17-21, 29; effects of 13-15, 25, 29-31
lavra, lavriote monasticism 21, 91, 96
Lekapenos, Basil 110 n2, 128-130, 129-131
Lekapenos, Constantine 17
Lekapenos, Stephen 17
Leo VI 2, 3, 11, 35, 110
longi temporis praescriptio: see prescription, rule of

Macedonia (theme) 1
Macedonian dynasty 1-2, 31; legislative activity of 2-5
Maleïnoi, family of 112, 117
Maleïnos, Constantine 117
Maleïnos, Eustathios 117
Maleïnos, Michael 91
Manuel I Komnenos 14
master of petitions: see *epi tôn deéseôn*
Melitene 49 n1, 51
mercenaries 19-20, 21
Michael III 1, 2
military lands 7, 8, 16-21, 24, 48, 68, 69-70, 71-76; restrictions on transfer of 72-74, 104-106, 107-108
monasteries 8, 26, 65, 72; growth of 21-22; restrictions on 22-25, 59, 90-96, 112; diocesan authority over 122-126, 123-127
monasticism, forms of 21-22
Mousele, Romanos 68, 121
murder, penalties for 87, 89, 112, 128, 129

Nestorians 87
Nikephoros II Phokas 6, 13, 17, 21, 31, 97, 98, 102, 109, 124 n16; military policy of 19-20, 104-106; and monastic vocation 24-25, 90-91
nomisma 17 n32
novel, form and function of 5-6

oikos 20
Opsikion theme 52, 68
oratories (*eukteria*) 23-24, 112, 122-126

Paphlagonia (theme) 30
paroikos 14, 49 n1, 76
Peira 3
Philokales 118 n9, 119
Philomelion 121
Phokas, Bardas 17, 68
Phokas, Bardas (rebel) 30, 110 n2, 111
Phokas, family 17, 68, 112, 117
pious houses (*euageis oikoi*) 21, 55, 63, 72, 90, 92, 95, 109, 110
Polyeuktes, Patriarch 82
"poor" persons 8, 25, 26, 36, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 68, 77-80, 97-98, 99, 100, 114, 115, 116, 117, 118, 119, 120, 121, 122, 132; definition of 27-28, 61, 64, 78-79
"powerful" persons: see *dynatoi*
pre-emption, rule of 11-12, 14; terms of 35-36, 37, 38-39, 40-45, 54, 66, 97-98, 99-100
prescription, rule of 12-13, 20, 73, 97 n1, 98-99, 100-101, 111-112, 114-122
proasteia 9
Procheiron 2
protimesis: see pre-emption, rule of
protimesis (preferential right) 107 and n6
protokentarchoi 119

reimbursement, terms of 50-51, 55, 56, 58, 59-60, 61, 64-65, 72, 75, 76, 77-78, 78-81, -84, 105-106, 112, 120, 121
rescript, form and function of 5, 6-7
Romaios, Eustathios 3
Romanos I Lekapenos 6, 10, 11, 12, 22, 23, 26, 27, 28, 37, 38, 49-53, 61, 80 n7, 90, 97, 98, 111, 112, 119, 120, 121, 124, 125, 132
Romanos II 6, 77, 82

sailors 71, 73, 106
Samos (theme) 71
Saronites, Romanos 68
scholarios 15, 64, 64, 65, 72; counted as *dynatoi* 119
Senate 26, 55
Skleros, Bardas 30, 110 n2, 111
soldiers' properties: *see* military lands
strategos 16, 68, 75, 76, 88
strateia 16, 48, 72, 76, 84, 87, 89; exemptions from 18, 73-74, 84-85; minimum inalienable value of 17-18, 19-20, 69, 71, 73, 104-106; changes to 19-21; partial *strateia* 73
stratiotai 7, 9, 15, 16, 17-20, 48, 65, 69-70, 71, 72-76, 77, 78, 81, 85, 98, 104-106, 107-108; *see also* Armenian *stratiotai*

stratiotika ktemata: see military lands
statute of limitations: *see* prescription, rule of
Symeon the Logothete 90 n1
Symeon *protasekretis* (the Metaphrast) 24 n47, 77 n1, 82 n2, 90 and n1
synchoritai 27
syndotai (joint contributors) 16, 18, 73 n9, 85
Synopsis basilicorum major 2, 4, 104
syntelestai 27
Syria 2, 17, 31, 87, 89
Syrians 86, 87

tagma 15, 88
themes (*themata*) 15-16, 17, 88
Theophilos *patrikios* and *quaestor* 61, 78
Thrakesion theme 30 n62, 61, 63

village commune (*chorion*) 7-8, 23, 25, 56, 61-62, 63, 64, 66, 80, 98, 102, 124, 126; structure of 9-11; protection of 11-13, 38-39, 50-51, 111-112, 114-122; fate of 13-15

zeugarion 18